SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1285

JOHN P. WOOD, ED STEVENSON, RACHAEL GOFORTH, BOB PHILPOT, JIM AYLESHIRE, RAYMOND STROUD, BILL PLUNKETT, and MENA SPECIAL SCHOOL DISTRICT,
Petitioners,

vs.

PEGGY STRICKLAND, a Minor, by Mr. and Mrs. Virgil Justice, Her Parents and Next Friends; VIRGINIA CRAIN, a Minor, by Doris Crain, Her Mother and Next Friend,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX

TABLE OF CONTENTS

	Page
List of Relevant Docket Entries	1
Complaint	6
Motion for Preliminary Injunction	12
Affidavit in Support of Motion for Preliminary Injunction	13

Transcript of Testimony Presented at March 7, 1972 Hearing in the District Court on Plaintiffs' Motion for Preliminary Injunction 14
Miss Peggy Strickland 14
Miss Virginia Crain 39
Miss Peggy Strickland (recalled) 48
Miss Virginia Crain (recalled) 49
Mr. P. T. Waller 50
Mr. S. L. Inlow 61
Mr. Ed W. Stevenson 69
Findings of Fact made by the District Court at the March 7, 1972 hearing 78
Order Denying the Preliminary Injunction 84
Answer of Defendants 85
Comments of United States District Judge made on April 7, 1972 in connection with a hearing on Plaintiffs' Motion to Amend their Complaint 86
Defendants' Report to the United States District Judge ... 90
Amendment to Complaint 91
Deposition upon Interrogatories of Mr. Andrew Spahl .. 93
Separate Answer of S. L. Inlow 94
Separate Answer of Duddy Waller 95
Separate Answer of Defendants John P. Wood, Ed Stevenson, Rachael Goforth, Bob Philpot, Jim Ayleshire, Raymond Stroud, Bill Plunkett and Mena Special School District 97
Defendant Inlow's Answers, with Exhibits, to certain Interrogatories propounded by the plaintiffs 100

Defendant Inlow's Answers, with Exhibit, to other Interrogatories propounded by the plaintiffs 109
Affidavit of S. L. Inlow 113
Affidavit of Miss Peggy Strickland 116
Order Denying Motion for Partial Summary Judgment filed by Defendants Inlow and Waller 119
District Court's Instructions to the Jury at the Trial in August, 1972 120
Order of Mistrial 122
Defendants' Motion for Directed Verdict and Motion for Judgment Notwithstanding Verdict or Lack of Verdict 123
Motion of Defendants Inlow and Waller for Judgment in Accordance with their Motion for Directed Verdict .. 125
Response by Plaintiffs to Defendants' Motion for Directed Verdict 128
Order granting Motion for Directed Verdict (District Court's Memorandum Opinion appears at A.15, Petition for a Writ of Certiorari) 129
Plaintiffs' Motion for New Trial 130
Order denying Motion for New Trial 133
Notice of Appeal 134
Mandate of United States Court of Appeals for the Eighth Circuit (Opinion appears at A.1, Petition for a Writ of Certiorari) 135
Addendum (selected Exhibits introduced at the August, 1972 Jury Trial) 137

LIST OF RELEVANT DOCKET ENTRIES

1972

Mar. 6 Complaint filed.

Motion for Preliminary Injunction, filed.

Affidavit in Support of Motion for Preliminary Injunction, filed.

Certificate by Attorney Pursuant to Rule 65(b)(2), filed.

Mar. 7 Hearing on motion for preliminary injunction Evidence presented.

Court's oral findings of fact and conclusions of law.

Order denying plaintiffs' motion for preliminary injunction filed.

Mar. 10 Answer of Defendants, filed.

Mar. 22 Plaintiffs' Interrogatories to Defendants, filed.

Mar. 23 Requests for Admissions, filed by plaintiffs.

Apr. 6 Response to Requests for Admissions filed by S. L. Inlow.

Apr. 7 Hearing on plaintiffs' motion, filed March 14, 1972, to file amendment to complaint. Plaintiffs granted leave to amend, by interlineation, their proposed amendment to complaint.

Court requests defendants to hold a School Board meeting and that plaintiffs Peggy Strickland and Virginia Crain be given an opportunity to appear and make an apology and ask to be reinstated; that a report be made to the court within one week, and

that further proceedings be postponed until after the report is filed with the court.

Apr. 10 Court Reporter's transcript of Findings of the Court, dictated into the record on March 7, 1972, filed.

Apr. 11 Plaintiffs' Interrogatories to Defendants, filed. Plaintiffs' Requests for Admissions, filed.

Apr. 13 Letter from Mr. Joe H. Hardegree, attorney for defendants, to Judge Paul X. Williams, dated 4-12-72, advising action of school board at meeting on 4-11-72 filed.

Apr. 14 Plaintiffs' Interrogatories, filed.

Apr. 21 Amendment to Complaint filed.

May 1 Separate Answer of S. L. Inlow, filed.

Separate Answer of Duddy Waller, filed.

May 10 Separate Answer of Defendants, John P. Wood, Ed Stevenson, Rachel Goforth, Bob Philpot, Jim Aleshire, Raymond Stroud, Bill Plunkett and Mena Special School District, filed.

June 2 Defendants' Answers to Requests for Admissions, filed.

June 19 Hearing on question of jurisdiction.

June 23 Answers of S. L. Inlow to interrogatories propounded by plaintiffs, filed.

Answers of S. L. Inlow to additional interrogatories propounded by plaintiffs, filed.

Defendants' Answers to Interrogatories dated April 13, 1972, filed.

July 6 Motion of Defendants S. L. Inlow and Duddy Waller for Partial Summary Judgment, filed.

Affidavit of S. L. Inlow, filed.

July 17 Response by Plaintiffs to Motion for Partial Summary Judgment by Defendants S. L. Inlow and Duddy Waller, filed.

July 21 Order overruling motion for summary judgment filed by Defendants S. L. Inlow and Duddy Waller, and further setting this case for trial to a jury on Thursday, August 17, 1972 at 9:00 a.m., or as soon thereafter as the case can be reached.

July 24 Affidavit of Peggy Strickland filed and attached to Response by Plaintiffs to Motion for Partial Summary Judgment by Defendants S. L. Inlow and Duddy Waller.

Aug. 7 Court Reporter's Transcript (Excerpts) of Hearing on March 7, 1972, filed.

Aug. 17 Trial to jury. Evidence presented by plaintiffs.

Aug. 18 Trial to jury resumes. Plaintiffs rest. Defendants motion for instructed verdict. Overruled. Evidence presented by defendants.

Aug. 19 Trial to jury resumes. Defendants rest. Rebuttal. Arguments. Instructions. Jury Deliberation.

Aug. 21 Trial to jury resumes. Further Deliberation. Jury Foreman announces jury hopelessly deadlocked. Mistrial.

Order declaring mistrial, discharging jury from further consideration of case filed.

Aug. 24 Motion for Directed Verdict and Motion for Judgment Notwithstanding Verdict or lack of Verdict, filed by Defendants Mena Special School District.

Aug. 25 Motion of Defendants S. L. Inlow and Duddy Waller for Judgment in accordance with their Motions for Directed Verdict, filed.

Sept. 8 Court Reporter's Transcript (Partial) of Proceedings of March 7, 1972 and April 7, 1972, filed.

Court Reporter's Transcript (partial) of Proceedings of March 7, 1972, filed.

Sept. 11 Response by Plaintiffs to Motions by Defendants, filed.

Sept. 29 Court's Memorandum Opinion, filed.

Order granting motion of each defendant for judgment in his favor in accordance with his motion for a directed verdict made during the trial, and dismissing complaint as to claims of each plaintiff with prejudice, defendants to recover from plaintiffs all their costs herein expended.

Order filed.

Oct. 6 Joint Motion of Plaintiffs for New Trial, filed.

Oct. 10 Brief Separate Statement in Support of Motion of Plaintiffs for New Trial, filed.

Oct. 20 Copy of letter opinion of court to counsel, filed.

Order overruling plaintiffs' motion for new trial.

Nov. 17 Plaintiffs' Notice of Appeal from Order entered September 29, 1972, and Order entered October 20, 1972, filed.

Dec. 20 Plaintiffs Description of Parts of Transcript to be included in Record and Statement of Issues, filed.

1973

Aug. 29 Opinion of United States Court of Appeals for the Eighth Circuit.

Oct. 11 Opinion and Mandate of United States Court of Appeals for the Eighth Circuit remanding cause to District Court for action consistent with Opinion, awarding attorneys fee to counsel for appellants and taxing costs against appellees, filed.

(The following matters do not appear in the Record as Docket Entries but are included herein as a summary of matters occurring since the decision of the United States Court of Appeals for the Eighth Circuit.)

Sept. 27 United States Court of Appeals for the Eighth Circuit denies Petition for Rehearing En Banc or by the Panel (see A. 10, Petition for a Writ of Certiorari).

Oct. 18 Opinion by three Judges of the Court of Appeals for the Eighth Circuit, dissenting from denial of Petition for Rehearing (see A. 11, *Ibid*)

Dec. 17 Order entered by Mr. Justice Blackmun extending time for filing the Petition for a Writ of Certiorari (see A. 14, *Ibid*)

1974

Feb. 21 Petition for a Writ of Certiorari filed.

Apr. 15 Certiorari granted.

June 13 Court Reporter's Transcript of Testimony during trial by jury, August 17-21, filed. (Docket entry).

In the United States District Court, Western District of Arkansas, Fort Smith District

Civil No. FS 72-C-11

Peggy Strickland, a Minor, by Mr. and Mrs. Virgil Justice, Her Parents and Next Friends: Virginia Crain, a Minor, by Doris Crain, Her Mother and Next Friend. Plaintiffs

v.

S. L. Inlow, Duddy Waller, John P. Wood, Ed Stevenson, Rachael Goforth, Bob Philpot, Jim Ayleshire, Raymond Stroud, Bill Plunkett and Mena Special School District, Defendants

COMPLAINT[1]

(Filed March 6, 1972)

1. The plaintiff, Peggy Strickland, is a minor and brings this action through and by her parents, Mr. and Mrs. Virgil Justice, as her next friends. The plaintiff, Virginia Crain, is a minor and brings this action by and through her mother, Doris Crain, as next friend.

2. The defendant, S. L. Inlow, is now and was at all times pertinent herein the Superintendent of Schools at Mena, Arkansas and employed as such by the Board of Education of the defendant, Mena Special School District. The defendant, Duddy Waller, is now and was at all times pertinent herein the Principal of the High School at Mena, Arkansas, employed as such by the Board of Education of Mena Special School

[1] The case title, signature lines and certificates of service are hereinafter omitted from other pleadings and orders set forth in this Appendix. All matters set forth in this Appendix involved proceedings in the District Court, except the Mandate of the United States Court of Appeals for the Eighth Circuit.

District. All other named defendants are members of the Board of Education for the Mena Special School District, presently serving and were serving at all times pertinent herein. This action is brought against the foregoing named defendants in both their individual capacities respectively and in their official capacities with the Mena Special School District respectively. The defendant School District is the political sub-division and arm of the government of the State of Arkansas charged with the responsibility of conducting the public schools for Mena Special School District in Polk County, Arkansas.

3. All parties hereto are residents of Polk County, Arkansas except Mena Special School District and it is located in Polk County, Arkansas.

4. This is a civil action seeking declaratory relief, a temporary restraining order, a preliminary and permanent injunction and equitable relief to enjoin deprivation of rights, privileges and immunities guaranteed by the Constitution of the United States of America. Jurisdiction in this court exists by reason of 28 U.S.C. 1343(3) and (4), 28 U.S.C. 2201 and 2202, and 42 U.S.C. 1981 and 1983. This action challenges as void and repugnant to said Constitution a certain rule and regulation adopted and enforced by the defendants, and certain actions taken by the defendants pursuant to such regulation.

5. On and prior to February 18, 1972, plaintiffs were duly enrolled as students in the High School in Mena, Arkansas, both in their sophomore year, and were attending said school regularly and in good standing, making passing grades and neither having ever been subjected to any disciplinary procedure before February 18, 1972.

6. At some time prior to February 18, 1972 the defendants or their predecessors had promulgated as a part of the school policy a certain rule and regulation reading as follows:

3. Suspension

* * *

b. Valid causes for suspension from school on first offense: Pupils found to be guilty of any of the following shall be suspended from school on the first offense for the balance of the semester and such suspension will be noted on the permanent record of the student along with reason for suspension.

* * *

4. The use of intoxicating beverage or possession of same at school or at a school sponsored activity.

7. On February 18, 1972 the plaintiffs were both summarily expelled from the Mena Public Schools for one week by the defendant Duddy Waller on a charge of having violated the foregoing rule.

8. Following the action of the defendant Duddy Waller in expelling the plaintiffs for one week, to-wit, on the evening of February 18, 1972, the defendant School Board summarily expelled the plaintiffs for the balance of the present semester on the same charge. The action of the School Board was taken without the plaintiffs being notified to attend, or invited to attend, or told they could attend. Rather, the defendant, Duddy Waller, told the plaintiffs, upon the occasion of his expelling them, that the School Board was to meet that evening, that he, Duddy Waller, would appear before the Board in their behalf and attempt to limit their expulsion to one week, that they could tell their parents, if they so desired, that they had been expelled, but if they did tell their parents that they had been expelled, that they should also caution their parents against contacting individual members of the Board about it. No notice whatever of the intended Board meeting was sent to the parents by the defendants and neither the plaintiffs nor their parents were invited to attend and none did attend. Following

the summary expulsion of the plaintiffs by the School Board, plaintiffs met with the defendants Inlow and Waller, with their parents present, and were told of the action of the board, that it was based on the foregoing rule, that the Board considered the rule mandatory and that they had no choice but to make the expulsion for the balance of the school term. The parents of plaintiffs requested the defendants Inlow and Waller to call another special meeting of the Board but the defendants declined to do so. The plaintiffs then employed counsel and upon their attorney's request the School Board held a special meeting on March 2, 1972 at which the plaintiffs, their parents and their attorney was present. However, the School Board merely presented a list of findings of fact, presented no witnesses to the plaintiffs, identified no witnesses for the plaintiffs, gave no information to the plaintiffs as to what had been said against them at the prior meeting, and, in fact, did nothing except to sit silently while the plaintiffs and their attorney attempted to explain and reason with the Board, following which effort the Board again reaffirmed its ruling of February 18, 1972, without explanation, expelling the plaintiffs from school for the remainder of the semester. Such action was taken on the basis of the rule above set out.

9. The plaintiffs challenge the rule as being unconstitutional in that it violates substantive and procedural due process rights guaranteed to them by the Fifth and Fourteenth Amendments to the United States Constitution. The action of the School Board pursuant to the said rule is void in that the plaintiffs, after having been led by the defendant Waller to believe that they should not attend, did not attend and have never been furnished with any opportunity to hear any witnesses against them nor to dispute such witnesses nor to explain the testimony of such witnesses but rather have wholly been denied any semblance of a hearing whatever.

10. Further, the said rule is unconstitutional and void by reason of being arbitrary, capricious, unreasonable and oppres-

sive. It purports by its terms to be mandatory and permits no exercise of discretion by any school official, it makes no allowance for extenuating circumstances in any particular case; it makes no provision for a lesser degree of punishment than expulsion for the balance of the school term, and, as applied by the Board in this case, constitutes excessive punishment and is abusive and oppressive of these plaintiffs.

11. The action of the Board in its enforcement of the rule against these plaintiffs in this case is further void in that the defendants have arbitrarily applied the rule against the plaintiffs while refusing to apply it against other students involved in the same incident, thus discriminating against these plaintiffs and denying to the plaintiffs equal protection of the laws in violation of Amendment Fourteen of the United States Constitution.

12. The said rule is void on its face as violating Amendment Fourteen by denying to persons subject to it equal protection of the laws. This results from the fact that, by its own terms, the rule is mandatory and fixes the punishment as expulsion for the balance of the semester, thus changing the mandatory punishment and providing, for the same offense, a different penalty every day of the school term.

13. The said rule and its summary enforcement by the defendants denies to these plaintiffs a fundamental right secured by the Ninth Amendment to the United States Constitution, which right is that to receive an education in the public schools provided by the State.

14. The plaintiffs were in good standing in the Mena High School prior to the foregoing action of the defendants and will suffer irreparable harm and injury if prohibited from continuing to attend high school at the Mena High School for the balance of the school term, and they have no adequate remedy at law against such harm. Their education will be retarded and

jeopardized and they will be irreparably harmed unless allowed to resume classes during the pendency of this action and unless the defendants, during such time, be restrained and enjoined from further penalizing these plaintiffs or imposing against them any sanction pursuant to the foregoing rule.

15. The defendants will suffer no harm from the granting of a temporary injunction and no bond should be required therefor.

16. The rule further provides that "such suspension will be noted on the permanent record of the student along with reason for such suspension," which provides for a permanent stigma upon each of these plaintiffs by a record made against her and prior to which she has had no opportunity to contest the accuracy of the charges upon which such record is based.

Wherefore, the Plaintiffs Pray That:

1. The court advance this case on the docket for a speedy hearing on the allegations and prayer for temporary relief;

2. That upon a temporary hearing the defendants, each and all, be temporarily enjoined from further enforcement of the foregoing rule against these plaintiffs;

3. That the plaintiffs be allowed to resume attending classes and studying at the Mena High School and be allowed to make up any school work that they may have missed by reason of their illegal suspension and barring the defendants from imposing any sanction on the plaintiffs as a result of their expulsion as aforesaid;

4. That upon final hearing the court declare the foregoing rule invalid, null and void as repugnant to the United States Constitution and make permanent the temporary injunctions; and

5. The plaintiffs recover their costs and all other relief to which they may be entitled.

(Signatures and Certificate omitted)

In the
United States District Court
Western District of Arkansas

(Title omitted in printing)

MOTION FOR PRELIMINARY INJUNCTION

(Filed March 6, 1972)

The plaintiffs move the court for a preliminary injunction enjoining the defendants, their agents, servants, employees and all persons in active concert and participation with them, pending the final hearing and determination of this action, from expelling the plaintiffs, or either of them, from Mena High School, and from interfering in any way with or preventing the attendance by the plaintiffs of classes at Mena High School, its school functions and extra curricular activities on the grounds that:

(1) Unless restrained by this court the defendants will perform the acts referred to;

(2) Such action by the defendants will result in irreparable injury, loss and damages to the plaintiffs, and each of them, as more particularly appears in the verified complaint and the affidavit of Ben Core attached hereto;

(3) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the defendants but will prevent irreparable injury to the plaintiffs.

In the
United States District Court,
Western District of Arkansas

(Title omitted in printing)

AFFIDAVIT IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

(Filed March 6, 1972)

State of Arkansas }
County of Sebastian } ss.

Ben Core, being duly sworn, deposes and says:

1. He is one of the attorneys for the plaintiffs in the above entitled action.

2. This is an action for declaratory relief and equitable relief.

3. The defendants are the Superintendent of Mena Public Schools, the Principal of the Mena High School and the Members of the Board of Education of the Mena Special School District. The plaintiffs are two tenth grade students at Mena High School. The Principal first and the Board second have summarily expelled both of the plaintiffs from the Mena High School for the balance of the semester and are presently excluding them from classes and preventing their attendance as students at such school under and by virtue of a School Board Rule or Policy which the plaintiffs contend to be invalid and void and in violation of the Fifth, Ninth and Fourteenth Amendments to the United States Constitution. The summary expulsion of the plaintiffs occurred on February 18, 1972, and has caused them to this time to miss eleven (11) days of school and each day that passes is an additional day. If the enforced absence continues both plaintiffs will be caused to fail the pres-

ent school year, will be forced to fall behind their present class and finish school a year later, all to their damage, embarrassment and irreparable injury.

4. Unless the defendants are enjoined and restrained during the pendency of this action from the commission of the acts aforesaid the plaintiffs will suffer great and irreparable damage as aforesaid.

(Signature and jurat omitted)

HEARING ON MOTION FOR PRELIMINARY INJUNCTION

March 7, 1972

(Partial Transcript)

[4*] **MISS PEGGY STRICKLAND,**
after having been first duly sworn, testified as follows:

Direct Examination

By Mr. Core

Q. State your name. A. Peggy Strickland.

Q. Peggy, if you will talk a little louder than you usually do so that we can all hear you. A. All right.

Q. How old are you? A. 16.

Q. What is your birth date including the year? A. April 6, 1955.

Q. Prior to February 18th were you a student at the Mena High School? A. Yes, sir.

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* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

Q. How old have you been attending at Mena? A. Four years.

Q. Had you been passing your grades all right? A. Yes, sir.

Q. Never failed any grade? A. No.

Q. Were you making passing grades again this year? A. Yes, sir.

[5] Q. Do you get marks for deportment, conduct and so forth? A. Yes, sir.

Q. How are your marks in that? A. One is good, I mean one is excellent, two is good, three is average, four is failing.

Q. What sort of marks have you been getting? A. One. I stayed within the one.

Q. Have you ever been disciplined by the school authorities? A. No, sir.

Q. During your time in school? A. No, sir.

Q. Would you explain to the Court what FHA means to you and your group? A. It is an organization that the girls—you know—join in; it is the Future Homemakers of America.

Q. Is it connected with the Home Ec class in high school? A. Yes. You have to have at least one year of Home Ec to get in.

Q. Do you have some office in that organization? A. Yes, sir.

Q. What is that? A. I am a song leader and historian.

Q. When were you elected to that office? A. Last year, at the end of last year.

Q. When did you commence to serve? [6] A. This year.

Q. And you were so serving then during February of 1972? A. Yes, sir.

Q. Now, would you—let me ask the Court for a little direction here. On this temporary hearing I had not planned on go-

ing in to the merits of it, be glad to do that if the Court wants to hear it but I was thinking that the constitutional question would go more to procedure at this point than anything else.

The Court: You proceed however you want to. You will have to demonstrate about the constitutionality. Unless you can show me a federal constitution question in this matter it would not belong here, it would belong over in the state courts.

Mr. Core Continues

Q. Peggy, describe for the Court the meeting that you had planned to have of the FHA on February 7th; in other words what was it to be? A. It was to be a mother-daughter panel discussion.

Q. What time of day was it to be held? A. 3:30. Refreshments would be——

Q. Refreshments would be served at the meeting? A. Yes, sir.

[7] Q. Before the meeting? A. Yes.

Q. And the meeting was to begin at 3:30? A. Yes, sir.

Q. Was school over at that time? A. School gets out at 3:20 so we were to serve refreshments at 3:20 to 3:30.

Q. I see. So school was officially out at 3:20 p.m.? A. Yes, sir.

Q. And you were going to serve refreshments between 3:20 p.m. and 3:30 p.m.? A. Yes, sir.

Q. What part did you have in planning the refreshments for that meeting? A. Well, they started during this year the officers take turns in being the head of refreshments and it was about my turn so I just volunteered to take on the refreshments.

Q. What happened in getting the refreshments ready that day? A. Well, Sandy Thomas, she forgot the punch, her and Ginny Brown they got mixed up, so she forgot the punch and we had to get some punch.

Q. Just a minute; if you will when you give these names pronounce them distinctly so the reporter can get them. A. All right. Sandy Thomas and Ginny Brown, they were talk- [8] ing in Home Ec, I guess they got confused as to who was supposed to bring the punch, so Sandy did not bring the punch. Then we had to have some punch so I had to make some up at noon and the idea came up in English to spike it. So——

Q. OK. When is English, what period? A. That is the first period.

Q. And you say the idea to spike the punch came up during the first period? A. Yes, sir.

Q. Who all was in on that discussion? A. Me, Virginia Crain, Ginny Brown, Jo Wahl.

Q. Was anyone objecting to spiking the punch? A. No, sir.

Q. So you were all for it? A. Yes, sir.

• • • • • • •

[9] Q. Now, then, was any further discussion had about this problem later than the first period? A. Yes, sir. In the second period——

Q. In the second period? A. Yes, sir.

Q. What course do you have during the second period? A. Geometry.

Q. Were you in on that discussion too? A. Yes, sir.

Q. Who else was in on it? A. Patty Rackley, Sandy Thomas again, Debbie Philpot, they heard about it. They were not exactly talking in on it but, you know, they heard what we told them. Patty was planning on going with us.

Q. When you say "going with us" what do you mean by that? A. Going over to Oklahoma to get it.

Q. To get whatever you was going to spike it with? A. (Shakes head in the affirmative.)

Q. Now, can you tell us whose idea it was, who suggested it to start with? A. No, because—you know—when the idea come up I just don't remember who said it, you know, just really don't.

Q. At this point you cannot say whose idea it was? A. No.

[10] Q. Do you remember whether it was your idea or not? A. No, sir.

Q. So, you was not the first one to think of it? A. No, sir.

Q. When did you go for the drink that was used to spike it with? A. The third period.

Q. Who all went? A. Virginia Crain, me, Jo Wahl.

Q. Of course, Virginia Crain is one of the plaintiffs here in this case? A. Yes, sir.

Q. Along with you? A. Yes.

Q. Now, who is Jo Wahl? A. She is a girl that goes to school with us and is a sophomore.

Q. One of the students? A. (Shakes head in the affirmative).

Q. Is she in your 10th grade class? A. Yes, sir.

Q. And she is in FHA? A. Yes, sir.

Q. Now, what happened when you went after the punch—or went after the drink? **[11]** A. Well, we took her car. What do you mean what happened?

Q. Just tell the Judge about going over there and getting the bottles? A. Well, we got in the car, we drove over there. Before we went we got the money from FHA, she gave it to us, you know, to get some punch, to set the punch up. So we drove over, she paid for it because it is a drive-through.

Q. She, who do you mean? A. Jo Wahl paid for it. It is a drive-through place. We bought it then there and then we went

down this road and we stopped there and poured it in this gallon jug the two——

Q. How many bottles did you get? A. Two.

Q. Did you know what you was going to get? A. Yes, Jo told me. I never had heard of the stuff before, you know. She said they had lime—you know.

Q. So Jo Wahl knew what to get? A. Yes, sir.

Q. Did you know what it was? A. I did not know, no, sir.

Q. When she got it did you know whether she got—had gotten it or not or what it was; did you know anything about it? A. I knew that she got it but that is all.

Q. All right. **[12]** A. We poured it in that jug and we went down to a Piggly-Wiggly—when we got back in town we went to a Piggly-Wiggly and got King Coolers, that is this lime ricky, and a package of lime koolaids, mixed it all in that jug, then we went back to school and carried the jug back and poured it all in a punch bowl; then all together it made a gallon and a half of punch with water with it and everything.

Q. But you poured the King Cooler bottles in with the two Right Time bottles before you went back to school? A. Yes, sir.

Q. How large a bottle were those King Cooler bottles? A. They were I guess ten fluid ounces I guess.

Q. Is that some sort of a soft drink? A. Yes, sir.

Q. Then you took it back to school? A. Yes, sir.

Q. And poured enough water in it to make a gallon and a half? A. (Shakes head in the affirmative).

Q. What did you do with it now between the third period and the sixth period? A. We put it in the ice box.

Q. Who helped out, now, in putting the water in it after you got back to school? **[13]** A. Virginia and I and Jo Wahl.

Q. Just the three of you who had gone after it? A. (Shakes head in the affirmative).

Q. Now, start at the sixth period and tell us what happened from there on? A. Well, we had to carry it down there, we could not carry it down the stairs in the big punch bowl so Jo took the gallon jug and poured as much of it as would go in that jug into the gallon jug and I carried that down and then she carried the punch bowl down. Then when we got down there the part that was already in there they started tasting it, the girls, you know, around started tasting it and they were saying "Oh, you can tell it is spiked," and "Oh, I don't know——"

* * * * * * * *

[14] Q. You said "the others who were there", who do you mean by "the others"? A. Patty Rackley, Sandy Thomas, Debbie Philpot and Kathy Malone.

Q. These were girls in your Home Ec class? A. Yes, sir. And Cindy Thomson, and Moppy Billingsley.

Q. Moppy who? A. Billingsley.

Q. Those are the girls that you remember being there when you and Jo carried the punch down to the meeting room? A. Yes, sir.

Q. Where were you meeting? A. In the auditorium.

Q. Was that on the first floor? A. Yes, sir.

Q. And you brought the punch down from the Home Ec room? A. Yes, sir.

Q. Which was on the second floor? A. Yes, sir.

Q. When you say you got down to the room and these other girls were in there and some of them started tasting it? A. Yes, sir.

Q. Do you know who tasted it, do you remember? A. No, I could not say; just about everybody that was there **[15]** that I named.

Q. What would they do to taste it; would they fill up a cup and drink out of the cup or drink out of the spoon or what were they doing to taste it? A. They were tasting out of the spoon and the cup, you know, both.

Q. Both of them? A. (Shakes head in the affirmative.)

Q. Were you carrying either of the containers at that time? A. The jug.

Q. Where were they getting what they were tasting? A. Out of the punch bowl.

Q. Out of the bowl? A. Yes, sir.

Q. Who was carrying the bowl? A. Jo. She set it down on the chair, that is when they—it was already set down in the chair.

Q. Jo Wahl set the punch bowl down, that is when they started tasting it? A. Yes, sir.

Q. All right, now, what happened then after that? A. Well, when they said they could taste it I got scared and I took the jug outside and all the girls were just with me, you know, like a mob going outside following me, they started screaming "don't throw that out, Peggy, don't **[16]** pitch that out." I was beside the building and Cindy Thomson grabbed the jug from me and drank out of it and then that——

Q. What was your point in going outside? A. I was going to throw it out.

Q. Why was you going to throw it out? A. That is the reason they were screaming because I was going to throw it out and they screamed "don't throw it out."

Q. When did you tell them you was going to throw it out? A. When they said they could taste it.

Q. And before you left to go do it? A. Yes, sir.

Q. Why didn't you throw it out? A. Because I really could not, there were so many around screaming—you know—that affected me too and Cindy when she grabbed it and drank out of it.

Q. At the time she had it of course you did not have a hold of it? A. No, sir.

Q. Did you ever have? A. I did at first but I let go.

Q. Did she drink out of it before you let go or after you let go? A. Well, you see, kinda both. Like I had a hold of it and **[17]** when she drank it then—or starting to drink it, I let go.

Q. Did you ever have possession of it after that? A. No, sir.

Q. Did you ever drink any of it yourself? A. When I was making it up in the Home Ec room I did but not downstairs.

Q. Not after you got it to the meeting room? A. No, sir.

Q. In other words you did not go on in to the party there and take a cup of it yourself? A. No, sir.

Q. What did Virginia do after this commotion about over pouring it out? A. Well, you know, she was going to pour it too and she told me she was going to drop the punch bowl. She picked it up off of the chair and she said she was going to drop it, you know, not drop the whole bowl but kinda pour it out but then when she was holding it like this (indicating with hands) everybody thought she was holding it to dip out and everybody started dipping out and she just set it down and me and her went on down.

Q. Did you and Virginia then have any more to do with it? A. No, sir.

Q. Did anybody seem to object to it or get tipsy or anything over it? **[18]** A. No, sir.

Q. Did you hear any more about it then for a while? A. No, I just thought it was all over.

Q. When did you hear something else about it? A. It was that Monday it happened and that week went by and up until the Thursday of the next week.

Q. So this would have been about ten days? A. Yes, sir.

Q. Do you recall whether it was on the 17th or not, a Thursday the 17th? A. It was on Thursday.

Q. What happened that day? A. Mrs. Powell called us in; we went up to Home Ec to work on our Home Ec notebooks and she was talking to Cindy Thomson and Cindy come over and she looked at me and went like that (shaking head) and I did not know what was going on, I did not think anything about it because it was over with; then Mrs. Powell said "Virginia, I want to talk to you and Peggy" and she took us over there and she asked us——

* * * * * * *

[20] Q. Go ahead. A. She took us over there and she was talking to us and she said "now, girls, do you know anything about this spiking of the punch", and me and Virginia looked at each other and we said "well, no"—you know, kinda hesitant; and she said "well, girls, if there is anything about this I will try to handle it myself if you tell me the truth and I will try to punish you myself and handle it;" so we just told her the whole truth, just come out and told her everything that happened and she said "OK, girls, I will do my best to see what I can do and don't you think right now you should not be able to go over to State Convention", and we said "yes". That was going to be our punishment not being able to go to State Convention. That was all for that day, you know.

Q. That was all you heard about it for that day? **[21]** A. Yes, sir.

Q. She was talking to you and Virginia? A. Yes, sir.

Q. Then did you hear anything further? A. Yes. The next day in the morning she had talked to Jo because she

was absent that day, you know, the day she had talked to us; so she was talking to Jo Wahl. Jo come and got me and Virginia and took us up to the Home Ec room and she told us that word was getting around and it is getting kinda loud, you know, about this and that she did not want to break her word and say—you know—be a traitor and go back on us but that if it does get to Mr. Waller without us telling him that she is just going to say "slap it to them", give them what they deserve. So we thought going down there to Mr. Waller would be the best thing and we did go down there and she, you know, asked for mercy herself, kinda pleaded our case to Mr. Waller.

Q. Mrs. Powell went with you? A. Yes, sir.

Q. How many girls went? A. Me, Virginia Crain and Jo Wahl.

Q. I believe you said that she had talked to Cindy Thomson the day before, before she talked with you? A. Yes, sir.

[22] Q. You and Virginia. Did you hear what Cindy told her? A. Cindy said she was going to expel us then and that she talked her out of it and not for me to be mad at Cindy because —she told me not to be mad at her because if it were not for her we would be out of school and I guess Mrs. Powell kinda—you know—thought she was in it like me and Virginia were or was and that is why she was talking to her.

Q. Now, then, when you went down to Mrs.—or Mr. Waller's office what happened there? A. Well, Mrs. Powell told him the whole story. He was on our side again. He wanted to do the best he could for us and he said he would try to do the best he could for us, that he would have to—he said "girls, you know what this means," he said he was going to have to take it before the Board, that he appreciated us coming in and telling him what we did and that it would have gotten around to him and then that would have been bad right there, so then that day at the last period he called us back in there and he said "now, girls, you are expelled for one week and all extra curricular

activities are cut out and you will be on probation for the rest of the year." He said "they are going to hold a Board meeting tonight and you go home and tell your parents if you want to but please, girls, don't let them get in contact with any of [23] the Board members because—you know—they don't want to be bothered, you know what I mean, they do not want to be bothered with this, with the case."

Q. Did you tell Mr. Waller—well, what did you tell him about what had happened? A. Mrs. Powell told him everything. She told what I had just said.

Q. In other words Mrs. Powell spoke for you to Mr. Waller? A. Yes, sir.

Q. And you did not tell Mr. Waller anything, she told him? A. No, sir. He asked us each one if whatever Mrs. Powell said was right and we were sincerely sorry and all this and we all said yes.

Q. Did you ask you about anyone else being involved other than you and Jo and—— A. That came up and me and Virginia and Jo said "we don't want anymore involved in this," you know, "we don't want our friends in it too." So they said OK and we dropped it right there.

Q. Now, this was the first meeting with Mr. Waller that day? A. Yes, sir.

Q. Now, about the second meeting with Mr. Waller; was Mrs. Powell present then? A. That afternoon, no, sir, she was not.

Q. Who was present besides Mr. Waller and you? [24] A. I am not sure if Mrs. Powell was there or not. Maybe she was, I just really don't remember. It was Virginia, Jo Wahl and me.

Q. Up to that time had your parents been notified? A. No, sir.

Q. And Mr. Waller told you you was expelled for one week? A. Yes, sir.

Q. And then put on probation after you came back? A. Yes, sir.

Q. And what was this about being barred from extra curricular activities? A. We could not be in—you know—like FHA, could not be in extra curricular activities, any clubs, could not go out for cheer leader or be in the Pep Club or Rancherette or any thing like that.

Q. Was that for the week you was out of school or was that for the rest of the term? A. I guess for the rest of the year.

Q. During this meeting, now, Mr. Waller told you the Board was going to meet that night? A. Yes, sir.

Q. Were you invited by Mr. Waller to attend the Board meeting? A. No, sir.

Q. Did he tell you to tell your parents to come to the Board meeting? **[25]** A. No, sir.

Q. Was any form of written notice sent by you to your parents or sent by Mr. Waller by you to your parents? A. No, sir.

Q. Did you in fact tell your parents when you got home? A. Yes, sir.

Q. Did you also tell them that Mr. Waller had said "don't contact the Board members"? A. He was going to call Mr. Waller and, you know, I thought of what he said and I said "no, daddy, he said not to contact any of the Board members" but I do guess it would have been OK if he had contacted Mr. Waller.

Q. You said "he" was going to contact Mr. Waller; who was "He"? A. My daddy.

Q. And you then told him that Mr. Waller said not to do that? A. Yes, sir.

Q. So you did not go to the Board meeting Friday night? A. No, sir.

Q. Did either of your parents go? A. No, sir.

Q. Did you have anyone there in your behalf? A. Mr. Waller and Mrs. Powell were going to speak for us, the way Mrs. Powell did for us.

Q. They told you they were going to do that? **[26]** A. Yes.

Q. What did Mr. Waller tell you in that respect? A. He said "girls, I will try my best to explain to the Board what has happened and help them be as lenient as they can on you."

Q. What did Mrs. Powell tell you that she would do? A. She was just agreeing with Mr. Waller.

Q. Now, then, have you had any report from either Mr. Waller or Mrs. Powell as to what did happen at the School Board meeting? A. Before he called—well, the next morning he called us and told us that for me to go in to school and—you know—to tell us the decision that had been made.

Q. When you said "he" you mean Mr. Waller? A. Yes, sir.

Q. He called you the next morning? A. Yes, sir.

Q. The next morning would have been Saturday? A. Yes, sir.

Q. And you were at home, were you? A. Yes, sir.

Q. And he told you what, tell us again? A. He told us to—he asked for me and he said "Peggy, I would like to see you in Mr. Enlow's office at 9:15 and you can bring your parents if you would like to."

[27] Q. When did—when he called your home did he get you or one of your parents? A. No, sir, he got my daddy.

Q. And he asked for you? A. Yes, sir.

Q. Did you go to his office? A. Yes, sir.

Q. Or, Mr. Enlow's office? A. Yes, sir.

Q. Who went with you? A. My mother, my daddy and that is all, and me.

Q. Did you meet in Mr. Enlow's office? A. Yes.

Q. Who was present besides you and your mother and daddy? A. Virginia Crain and her mother and Jo Wahl and Mr. Waller and Mrs. Powell and Mr. Enlow.

Q. Now, what happened at that meeting? A. Well, they had already decided; they just told us what the Board had decided and that we were expelled for the rest of the semester.

Q. Did anyone make any request for an opportunity to go before the Board? A. My dad asked if they could hold a special Board meeting for this and he said "no, but you can bring it up again at the next Board meeting" which was to be March 14th.

[28] Q. You said "he said"—— A. Mr. Enlow.

Q. Did he explain why the Board had taken that action? A. There was a long discussion and everything. I guess you could say he did.

Q. In other words you were there for quite a while? A. Yes, sir.

Q. Quite a bit of talk? A. Yes, sir.

Q. But the result was that you were suspended? A. Yes, sir.

Q. Have you been back since then? A. No, sir.

Q. Who all was suspended? A. Jo Wahl, Virginia Crain and me.

Q. Have you had any instructions of any kind since you have been out of school? A. Instructions to what?

Q. Any tutoring or anything of that nature? A. No, sir.

Q. Allright—— A. We went in to—I have forgotten her name—Mrs. Roberts, you know, was talking about correspondence courses and we got a slip and everything.

Q. Are you trying to stay up in your studies in case you **[29]** get back in? A. You mean about getting our home work from other people—I have tried but no, they all say "oh, well——

Q. Did Mr. Enlow say anything to you about whether you would fail being out as long as three weeks? A. He said if we were out more than three weeks we would have a bad chance of passing anyway, probably fail anyway.

Q. What kind of grades were you making? A. I was above a C average. B's and C's you would say.

Q. Of course Cindy Thomson has not been expelled has she? A. No, sir.

Q. Do you know of any disciplinary action against her? A. All the girls that were involved they got in contact with, they got in contact with those girls I named and those girls named some other girls, you know, that they knew had drank it, you know, and there is no FHA the rest of the year.

Q. In other words the FHA has been dissolved for the rest of the year? A. Yes sir.

Q. When you are cooking up there in the Home Ec department do you use such things as vanilla flavoring? A. Yes, sir.

Q. And lemon extract and things of that nature? A. Yes, sir.

Q. Do you know anything about whether or not it has alcoholic **[30]** content in that? A. I think that it does.

Q. And you use that in the food that you cook? A. Yes, sir.

Q. Do you use it when you are mixing things to drink, flavoring? A. Vanilla extract?

Q. Yes. A. No, sir.

Q. What about lemon, would you use that in flavoring? A. I don't think you would.

Q. You don't use a flavoring in the drink? A. No, sir.

Q. Just use it when you are cooking? A. Yes, sir.

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Cross-Examination

By Mr Hardegree

Q. Miss Strickland, you live out west of Mena toward the Oklahoma line, do you not? A. Yes, sir.

Q. How far west of Mena do you live? A. Eight miles.

Q. Nine miles? [31] A. Eight.

Q. How far is it on west from your home to the Oklahoma line? A. I don't know.

Q. Don't have any idea? A. No, sir.

Q. Is that the way that you took when you went out to buy this Right Times malt liquor? A. No, sir.

Q. Where did you go to buy it, the Right Times malt liquor? A. The way you go to Cove, it is called Dogpatch.

Q. In other words you go down south of Mena on Highway 71 to Cove and turn west there on another highway to go out to where they call Dogpatch in Oklahoma, is that right? A. Yes, I guess.

Q. Dogpatch is a place where several beer joints are together out on state line, isn't it? A. Yes, sir.

Q. It was just you and Jo Wahl and Virginia Crain that went out there? A. Yes, sir.

Q. I understand you went in Jo Wahl's car and she was driving? A. Yes, sir.

[32] Q. And you went to a beer joint and purchased this Right Times malt liquor? A. Yes, sir.

Q. And nobody else was with you other than the three when you purchased it? A. No, sir.

Q. You went then out in to the woods some place and transferred the malt liquor from the bottles in to a container you had with you? A. Yes, sir.

Q. Then you went back in to Mena and got some soft drinks to go with it and mix that in with it? A. That is right.

Q. And took the whole mixture on to the school premises then? A. Yes, sir.

Q. And still nobody with you other than the three of you? A. No, sir.

Q. On the school premises you took that to the refrigerator? A. Yes, sir.

Q. And then later that afternoon you took it down to the Home Ec room to be used as punch? A. Yes, sir.

Q. And until that time it was still just the three of you handling it was it not? [33] A. Yes, sir.

Q. I imagine then when you took it down to the Home Ec room for the punch, Virginia, there was a lot of giggling and whispering made about you all had put some beer or malt liquor in to it, is that right? A. Yes, sir.

Q. Some of the other girls they took your word for it that there had been some, that you had put some alcohol in to it or alcoholic beverage? A. They knew that morning we were going to do it, some of them.

Q. In other words you are saying that you all planned that and you knew in advance, you anticipated you was going to do this and the other girls knew of the fact that you were going to? A. I am not saying they were with us when we originated the idea but they did know that we were going over for it.

Q. They came to know about it? A. Yes, sir.

Q. Some of them even spoke with you to try to discourage you from doing it, didn't they? A. No, sir.

Q. Did not? A. No.

Q. You are certain of that are you? **[34]** A. Yes, sir.

Q. Then they took your word for it that when you got back that you had in fact gone over to Oklahoma and got some alcohol beverage and brought it back and put it in this punch? A. Yes, sir.

Q. And they drank some of it? A. Yes, sir.

Q. Is that the only participation that anybody else had in this other than you and Jo Wahl and Virginia Crain what I have outlined there? A. Say that again.

Q. Others heard you say you were going to get—to Oklahoma to get some alcoholic beverages to put in this punch and others heard you say when you got back that you had gone and got it and put it in this punch? A. I did not say anything about it. I wanted to keep it quiet, I did not say anything about it, that I had been nor nothing. I did not even when they said was it spiked I would just go—well (shrugging shoulders).

Q. You would just give no answer? A. No, I would not say anything. I just would (shrugging shoulders).

Q. They did not know whether there was anything in there or not? **[35]** A. They had heard.

Q. And they had been giggling and you had said no and that sort of thing? A. (Shrugs shoulders). Well——

Q. Is that the only participation of anybody else in this scheme or this plan, Peggy? A. Yes, sir.

Q. What place or beer joint did you purchase this from in Oklahoma? A. It is a drive-in. I think it is called Kay's.

Q. It is just a tavern that has a drive-in window? A. Well, yeah.

Q. They don't have a package store over there in Dogpatch, just beer taverns? A. Where you have it packed?

Q. In a store where alcohol is on the shelf? A. No, it is taverns.

Q. It is about fifteen miles down to Cove and then about five miles out to the line? A. I don't know how far it is.

Q. Takes you about a half an hour to get down there from Mena? A. Well, yes.

Q. Mena is dry, isn't it; you cannot buy any beer or whiskey or alcoholic beverage in Mena? **[36]** A. Yes, sir.

Q. Or in Polk County? A. No, sir.

* * * * * * *

Q. Now, Peggy, are you telling His Honor, the Court, that anybody forced you not to throw this out? A. They forced me to throw it out? Nobody forced me.

Q. Nobody forced you to throw it out? A. No, sir.

Q. Nobody forced you not to throw it out, did they? A. No, sir.

Q. Of course nobody forced you or kept you from going at any time during this proceeding and telling the teachers or anybody in authority that it had already gone so far you wanted it stopped, did they? A. Say that again.

Q. Did anybody stop you from going and telling the authorities what had happened? A. No, sir.

Q. At any time? A. No, sir.

Q. Well—— **[37]** A. Nobody would have the chance because when she found out about it we was right then and there so nobody had even heard it except us that was there at the time.

Q. Did Mrs. Powell influence you to say anything to her or anyone else that was untrue? A. No.

Q. Did Mr. Waller influence you to say anything that was not true? A. No, sir.

Q. Did any other person in authority at that school influence you to say something that was not true? A. No, sir.

Q. Or that was not correct? A. (Shakes head in the negative.)

Q. What you told them was the truth about the part that you had in this, wasn't it? A. Yes, sir.

Q. You did say that other girls who had knowledge about this were forced to discontinue their Home Ec activities, did you not? A. After it had come to the point where we had to tell them that is when.

Q. In other words Mrs. Powell or the school administration took some action against them, didn't they? A. Yes, sir.

[38] Q. And they have been placed on probation and on good behavior, have they not? A. I do not know about that. Might have been but I do not know.

Q. Peggy, did you know Ricky Zink? A. That got expelled?

Q. Yes. A. I heard something about it but I did not know the main facts and everything, just heard that he had got expelled.

Q. You mean to say, Peggy, that you are a sophomore? A. Yes, sir.

Q. And that is in the same high school with Ricky Zink, isn't it? A. Yes.

Q. He is back in high school now, isn't he? A. Yes.

Q. He was expelled in the fall term, wasn't he? A. Yes.

Q. Are you saying this now, you did not know what he was expelled for? A. No, I am not saying, I really don't remember. I was excited.

Q. What was he expelled for? A. Now I know, he was expelled for having liquor.

Q. In his possession on the school premises, wasn't it? **[39]** A. Yes, sir.

Q. And you knew then every single child in high school knew then that he was expelled because he did have? A. No, I cannot say every child in high school knew it.

Q. Do you know of any child that did not know about it? A. No, but it was not a big deal with me because I did not hardly know the guy myself so when he got expelled it really did not strike me as very interesting.

Q. Do you have any knowledge of anyone who has brought alcoholic beverages on the school premises, Peggy Strickland, at Mena who has not had an action taken against them by the School Board or the school authorities? A. No, sir.

Q. Peggy, do you recall the meeting of the School Board on Thursday evening, March 2nd, at Mena? A. Yes, sir.

Q. Was this School Board meeting convened after you or someone for you had asked that it be done? A. Yes, sir.

Q. And at that School Board meeting you attended with your parents and Mr. Core as attorney for you, did you not? A. Yes, sir.

Q. And wasn't there presented to you or someone for you, in other words your attorney or your parents, at that time **[40]** Peggy, a statement of facts that the Board of Directors had acted on in making the expelling expulsion? A. Yes, sir.

Q. Do you recall at that meeting that anyone requested that witnesses be presented to support those facts? A. No, sir.

Q. Did you yourself request it? A. Request what?

Q. That witnesses be presented? A. No, sir, but I heard you all were just—you know—probably have them there so there was not no need to.

Q. Did your parents or Mr. Core did you understand any of them to request that those witnesses be presented and that you be confronted with a witness? A. How is that?

Q. Did you hear your parents or Mr. Core request that these witnesses be produced there at that meeting? A. No, sir.

Q. At that meeting, Peggy, you were given a full and free opportunity to produce any evidence or statement that you wished to do so, weren't you? A. Yes, sir.

Q. Was any hindrance made to your giving your evidence or your statement? A. No, sir.

[41] Q. Well, now—— A. Hinderance, what do you mean?

Q. Did anybody deter you or try to stop you? A. Stop me?

Q. Or stop you? A. No, sir.

Q. Have you talked with Mrs. Roberts at the school after your expulsion? A. Yes, sir.

Q. Is Mrs. Roberts the school counselor? A. Yes, sir.

Q. And she is the person that is designated there to assist or counsel students with personal and school problems? A. Yes, sir.

Q. Did you talk with her about what you might do, Peggy, to get around this expulsion and to continue with your schooling? A. Yes, we talked to Mr. Waller too.

Q. Mr. Waller. Did you talk to them about correspondence courses? A. Yes, sir.

Q. Have you been told or shown, Peggy, whereby you could by taking correspondence courses finish with your class? A. Yes, sir.

Q. This coming year? [42] A. (Shakes head in the affirmative).

Q. Of course, you will be finishing, you would be finishing year after next, wouldn't you? A. Well——

Q. I don't mean finishing high school this coming year but finishing with your class? A. Graduate?

Q. Yes. A. Yes, sir.

Q. I believe that is all, Your Honor.

The Court: Anything further with this witness?

Mr. Core: Yes, sir.

Redirect Examination

By Mr. Core

Q. Peggy, Mr. Hardegree asked you about the meeting with the Board last Thursday, March 2nd? A. Yes, sir.

Q. He asked you if any request was made that any witnesses be presented against you? A. Yes, sir.

Q. I will ask if any witnesses were presented against you? A. No, sir.

Q. Was Mr. Duddy Waller even present at the meeting? A. No, sir.

Q. And was Mrs. Powell present at the meeting? [43] A. No, sir.

Q. Have you ever heard them talk to the Board about what you told them; you have never heard them talk with the Board, have you? A. No, sir.

Q. You assumed they talked there the night of February 17th but you was not present to hear it? A. No, sir.

Q. And they were not present the night of March 2nd, were they? A. No, sir.

Q. Did anybody else undertake to talk about what you had told them or what you had done on the night of March 2nd other than yourself? A. No, sir.

Q. But you did tell them that night about what you told the Court here today, did you not? A. Yes, sir.

Q. That was in response to me asking you to tell them? A. Yes, sir.

Q. Asking you questions? A. Yes, sir.

Q. Did any of them ask you any questions? A. No, sir.

Q. Did any of them explain to you why they had done what [44] they had done? A. No, sir.

Q. Of course, at that time you had already been expelled, hadn't you? A. Yes, sir.

Q. Did you ever appear before the Board before you were suspended? A. No, sir.

Q. Now, with reference to Mrs. Powell, her influencing you to tell something that was not true or not to tell something, did what she promised you influence you to tell her the truth? A. Yes, sir.

Q. And you went ahead and told her what had happened because she promised you she would handle it? A. Yes, sir.

Q. Then why were you all influenced to go down and see Mr. Waller? A. Because she told us word was getting around and was getting real loud around the school and that Mr. Waller would probably find out anyway and her job would be on the line and she would just tell him to give us what we deserved.

Q. And you went with her then still in the hope of getting some leniency? [45] A. Yes, sir.

Q. And you heard her talk to Mr. Waller? A. Yes, sir.

Q. And you went to him in the hope of leniency? A. Yes, sir.

Q. And was that the reason that you went hoping for leniency? A. Yes, sir.

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[46] Mr. Hardegree: By stipulation of counsel could we—correct me if I am wrong—by stipulation of counsel Defendants' Exhibit No. 1 is introduced as the facts and findings of facts upon which the School Board had acted and which were presented to the petitioners at the School Board meeting on the night of Thursday, March 2?

Mr. Core: So stipulated. (See A. 137).

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[48] **MISS VIRGINIA CRAIN,**
after first being duly sworn, testified as follows:

Direct Examination

By Mr. Core

Q. Will you state your name, please? A. Virginia Crain.

Q. Virginia, if you will just speak a little louder so all can hear you. When were you born? A. October 29, 1955.

Q. Were you a student at Mena High School prior to February 18, 1972? A. Yes, sir.

Q. What grade were you in? A. 10th.

Q. Were you also a member of the same class that Peggy has been testifying to or about this morning, the Home Ec Class? A. Yes, sir.

Q. Are you also an FHA? A. Yes, sir.

Q. And did you hold an office in FHA? [49] A. Yes, sir.

Q. What was that? A. Secretary.

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Q. Now, Virginia, you have heard Peggy, of course, already testify about the plans that were made for spiking the punch there on February 7th and the part she played in it and that you played in it and that others played in it, so I will not ask you to repeat that unless there is some part of it that you feel that should be changed. Do you think Peggy told it about like it was? A. Yes. There was one incident she might have known. Cindy told me the reason Mrs. Powell come to her, Peggy thought maybe it was just because she thought maybe Cindy was in on it but Cindy told us it was because Cindy was a good Christian and everything thought maybe she would tell the truth so she came to Cindy to ask, that is what Cindy said.

Q. That is what Cindy said was the reason that Mrs. Powell talked to her? A. Yes.

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[50] Q. I want to ask you to back up a little, Virginia. Do you have any brothers and sisters who attend school at Mena? A. Yes, sir.

Q. Who are they? A. My little brothers and sisters?

Q. Do you have anyone else in high school? A. Yes, my sister is a senior, Norma Crain.

Q. She is a senior in the Mena High School? A. Yes, sir.

Q. I want to ask you this, have you prior to February 17th, 1972, ever had any disciplinary proceedings taken against you by the Mena School? A. No, sir.

Q. In other words you have never been in trouble before in school? A. No, sir.

Q. Were you passing your grades there in February 17th, **[51]** 1972? A. Yes, sir.

Q. What courses were you taking? A. English Three, Geometry, World History, Home Ec and Band.

Q. And you were passing all of these courses? A. Yes, sir.

Q. And what about your conduct grades? A. I made a One also.

Q. You always made a One? A. I think I made a One all the time.

Q. Is that the highest you can make? A. Yes, sir.

Q. Now, with reference to the type of beverage that was bought over there in Oklahoma, did you know anything about what to buy? A. No, sir, I had heard of it but I had never tasted it.

Q. Ever bought anything before like that? A. No, sir.

Q. Ever even been in a liquor store? A. No, sir.

Q. Do you know anything about liquor? A. No, sir.

Q. Who decided what to order when you drove up to the window? A. Well, I don't know. Jo just ordered.

Q. Jo Wahl ordered the drinks? **[52]** A. Yes.

Q. Had you ever seen anything like it before? A. No, sir.

Q. And you heard of course Peggy testify about the fact that you bought two bottles, is that the way you remember it? A. Yes, sir.

Q. And that you poured it in a milk carton and threw the bottles away? A. Yes, sir.

Q. Did that happen before you came back to Mena? A. Yes, sir.

Q. So you came back with the contents of the two bottles in a milk carton? A. Yes, sir.

Q. And you went to the Piggly Wiggly store and bought six bottles of some soft drink? A. Yes, sir.

Q. Now, let's go to the occasion of bringing the punch down to the meeting room; did you take part in that? A. No, sir.

Q. Were you in the meeting room when Peggy and Virginia came in with the punch? A. Yes, sir.

Q. What happened there? A. When I came in there the punch bowl was setting in a **[53]** chair where Jo had set it down I guess, I don't know who brought it down, Jo she said; it was setting in the chair and then I went up there where all the refreshments were being served and then three girls, Patty Rackley, Cindy Thomson and Debbie Philpot, they tasted of the punch to see if you could taste it in there and they said they could taste it. So that is when me and Peggy got scared and I got the punch bowl and she grabbed the—she already had the milk jug, it was in there and that is where we attempted to spill it.

Q. You intended to spill it out of the bowl? A. Yes, sir.

Q. Or just going to pour it there on the floor? A. I was just going to do anything with it, spill it or drop it.

Q. You had you had in mind even dropping the bowl and breaking it? A. Well, I was scared.

Q. In other words you wanted to get rid of the punch? A. Yes, sir.

Q. Now, what did you do after the girls started taking it out of the bowl; did they do that while you was a holding it? A. Yes, sir. They got a little spoon and started getting it in their cups. So I did not want them to think I was just sitting there for them so I got scared, they took it and they started pouring their glasses and I just set **[54]** it down there and I went with Peggy. We hid behind the wall.

Q. You say you hid behind the wall; what wall? A. There is a wall in the auditorium between the door and the chairs and we hid behind this wall.

Q. Did you have anything more to do with the punch after that then? A. No, sir.

Q. Now, you heard Peggy testify that she did not hear anything about it after that until about the 17th of February; is that true? As far as you know? A. Yes, sir.

Q. Then on that date you talked to Mrs. Curtis Powell? A. Yes, sir.

Q. Did you first deny any knowledge or any participation in spiking the punch to her? A. Yes, sir.

Q. But you then later changed your mind and agreed to tell her? A. Yes, sir.

Q. Your part in it? A. (Shakes head in the affirmative).

Q. Were you influenced any to do this by what she promised you? A. (Shakes head in the affirmative).

Q. You will have to answer yes or no, the Court Reporter can not get it by just nodding your head. **[55]** A. Yes, sir.

Q. In what way, Virginia? A. She said that if we told her she would try to keep it in herself and not let it get out around to the principal or anything, she would try to keep it in, but if later the principal found out she was just going to tell him to give us what we deserve.

Q. So you told her then hoping that the punishment that she decided on would be all that you would get? A. (Shakes head in the affirmative).

Q. What did she tell you was going to be the punishment? A. She told us we were not going to the State Meeting at Little Rock, FHA meeting, would be our punishment.

Q. What is that? A. Well, all the officers get to go and we elect some of the girls that we think have worked hard this year and then they get to go and we go to the zoo and go

shopping and go to a meeting. Everyone always looks forward to the meeting.

Q. Is it sort of a highlight of the year for the FHA? A. Yes, sir.

Q. This is a trip to Little Rock, is that what it is? A. Yes, sir.

Q. For how many days or nights? A. The whole day.

[56] Q. One day? A. Yes, sir.

Q. And your punishment according to Mrs. Powell that you would miss that trip? A. Yes, sir.

Q. Now, what about the next day when Mrs. Powell talked to you again and you went down to see Mr. Waller; what influenced you to go down there to see him? A. She said that if we tried to just take it on ourselves and let her handle she was afraid it might get out so she asked us if we would want to go down and tell Mr. Waller and we did. She said she would plead and ask for mercy, that he might—you know—she said she was sure he would level with us, he would understand. So we did go with her.

Q. You went down there in the hopes that he would be lenient with you? A. Yes, sir.

Q. Now, you heard of course Peggy's testimony from that point on; is there anything you want to add to that? A. No, sir.

Q. You were in on the interviews with Mr. Enlow and Mr. Waller and that was in Mr. Enlow's office on Saturday morning? A. Yes, sir.

[57] Q. Had you at any time been invited to attend the Board meeting on Friday night? A. No, sir.

Q. Were you told by anyone that you could attend? A. No, sir.

Q. Did you attend? A. No, sir.

Q. Was any notice sent by you or in any other manner to your mother that she could attend the Board meeting? A. No, sir.

Q. Did you tell your mother on February 17th, after you had been to Mr. Waller's office the second time, did you tell your mother that there was going to be a Board meeting? A. Yes, sir.

Q. And was this the first your mother knew that you had been suspended for a week? A. Yes, sir.

Q. You had not told her anything before that? A. No, sir.

Q. She had not been notified by the school authorities? A. No, sir.

Q. What did Mr. Waller tell you about that meeting that was going to be held Friday night? A. He said as of now we are suspended for one week and no activities and no state convention, he said that there [58] would be a meeting tonight on that Friday and he would call us after the meeting if it was not too late or the next morning. He said then we would know then what our punishment would be.

Q. Did he say anything about what he was going to tell the Board, what he was going to recommend? A. He said him and Mrs. Powell would do the best to help us and tell everything and ask for mercy.

Q. Did he say anything about whether or not you should attend or your parents should attend? A. No, sir, he did not say anything about that.

Q. What about if anything was said about contacting the Board members? A. He said to tell our parents not to try to contact them, the Board members.

Q. Did you tell your mother that? A. Yes, sir.

Q. And you did not of course attend the Board meeting? A. No, sir.

Q. Did you have a call the next day from Mr. Waller? A. Yes, sir.

Q. Who did he talk to at your house? A. I answered the phone and I talked to him.

Q. So you took the call yourself? A. Yes, sir.

[59] Q. What did he tell you? A. He told me—he asked me if I could come down to Mr. Enlow's office, bring my mother if I could. He asked me something about bringing my mother.

Q. Did you go to his office? A. Yes, sir.

Q. Can you tell us who was present? A. Mr. Enlow, Mr. Waller, Peggy, Mr. Justice and Mrs. Justice, and Jo Wahl and my mother.

Q. Now, about the meeting of March 2nd, you heard Peggy tell about that too; do you want to add anything to it? A. No, sir.

Q. Of course you was present the night of March 2nd when we met the School Board down there? A. Yes, sir.

Q. Have you ever at any time heard any witness tell the School Board anything about this or tell the School Board anything about what you have said to that witness? A. No, sir.

Q. The only time you have ever been before the Board of course was March 2nd, isn't that right? A. Yes, sir.

Q. And about the only people that talked that night was Peggy Strickland and myself and yourself, isn't that right? **[60]** A. Yes, sir.

Q. Was Mr. Waller present that night? A. No, sir.

Q. Was Mrs. Powell present that night? A. No, sir.

Q. Were any of these other girls that were involved were they present that night? A. Yes, sir, one.

Q. Who was there? A. Jenny Brown.

Q. Did Jenny Brown say anything? A. No, sir.

Q. Was she asked anything? A. No, sir.

* * * * * * *

Cross-Examination

By Mr. Hardegree

Q. Virginia, did I understand you was expelled a week before your mother knew about it? A. No, sir.

Q. You did not say that? A. No, sir.

Q. All right, in your statement and testimony and in your corroboration of what Peggy said I assume that there was **[61]** no person involved with you and Peggy and Jo Wahl in going after this alcoholic beverage? A. No, sir.

Q. No one involved with you in bringing it on to the school grounds or campus? A. No, sir.

Q. And no one involved with you in bringing it down and making it available as punch or refreshments or beverage to be taken at the function, is that right? A. That is right.

Q. Have you throughout all of this, Peggy, told anything to any of the people in authority at the school that is incorrect or wrong? A. I have not.

Q. Have not? A. I have not.

Q. Have you talked with Mrs. Roberts, the counselor at the school? A. Yes, sir.

Q. Has she pointed out to you the way in which you can go ahead and complete school with your class? A. Yes, sir.

Q. Do you know of any other case, Virginia, where someone has brought intoxicants on to the school premises that has not

been dealt with by the School Board or school [62] authorities? A. I did not know up until this that Ricky had.

Q. Did not know at this time or until this time that Rickey had? A. Yes, sir.

Q. Have you inquired since this happened about what happened to Rickey? A. Yes, sir.

Q. When you say you did not know it until this time about what had happened to Rickey you are talking about Rickey Zink, aren't you? A. Yes.

Q. And after this thing happened to you did you make some inquiry about Rickey Zink? A. Sir?

Q. How did you find out about Rickey Zink? A. Well, a big talk about Rickey when he got expelled for drinking stuff. I did not know, I knew that Rinky got expelled but I did not know what for.

Q. Did not know the details of it? A. No, sir.

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[64] **MISS PEGGY STRICKLAND,** Recalled

Direct Examination

By Mr. Core

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Q. I am holding in my hand a little green bottle; it says "Right Times Flavored Malt Liquor." Is that the type of bottle that you girls got over there in Oklahoma? A. Yes, sir.

Q. Was it this size of bottle? A. Yes, sir.

Q. Like to offer it as Plaintiffs Exhibit No. 3.

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The Court: Let it be introduced.

Mr. Core Continues

Q. For the Court's information I will read this later but the label says—well, on the top it has got a seal that says "Oklahoma," then down here "Gold, slightly tart, a new kind of adult beverage, Right Times, flavored malt liquor, Theodore Hamm Company, St. Paul, Minn., with artificial flavors, twelve fluid ounces."

The Court: Does it tell how much alcohol in it?

[65] Mr. Core: It does not.

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[66] **MISS VIRGINIA CRAIN,** Recalled

Direct Examination

By Mr. Core

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Q. Virginia, after you had been to Mr. Waller's office the second time on Friday the 17th of February when school was out did you go home? A. Yes, sir.

Q. Did you know about there being a ball game or something that night? A. Yes, sir.

Q. Did you go to the ball game? A. No, sir.

Q. Where did you stay that night? A. Home, stayed home.

Q. At your home? A. Yes, sir.

Q. And were you home say from, oh, six or seven o'clock in the evening for the rest of the night? A. Yes, sir.

Q. You did not attend that ball game? A. No, sir.

Q. Thank you.

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[4] **MR. P. T. WALLER,**
after first being duly sworn, testified as follows:

Cross-Examination, by Mr. Core

Q. Mr. Waller, how long have you been in the educational field? A. Since 1951.

Q. Do you consider expulsion a severe type of discipline? A. I would say this as I have stated before I believe the amount of punishment that would be due to serve the purpose [5] and we have had many problems in the Mena High School since I have been there, sir, and I have only been there one year.

Q. How long have you been there? A. One year.

Q. How many children have you expelled since you have been there? A. Five boys, five people have been expelled and I think it has helped our discipline tremendously, and I feel that under the circumstances that an expulsion if there is any way to get around it, fine, but we have got the overall discipline to think about and that is why we have the Board of Education, they make that decision, but I think or feel an expulsion in the other cases where we expelled children was definitely necessary.

Q. Without arguing that would you consider it a severe type of penalty? A. I would think yes, sir, it is severe, but I feel like it needs to be severe.

Q. In some cases or do you think it needs to be severe in every case? A. In cases where we have policies and where we have for alcoholic beverages as we have at Mena and as it has been used when alcoholic beverages is used, of course it is up to the Board there, I have no say, but I do not have any [6] use for alcohol. I do not believe it can be used in schools and discipline be maintained.

Q. I understand that you told the girls that you were going to go before the Board and do all you could to get them off with

a week's suspension? A. No, sir, I did not say that, no, sir, not with a week's suspension. I told them that I would plead to the Board to do whatever they needed to do and if they could do anything to help them finish their education then I would do it.

Q. So you did not tell them that you were going to try to get them off with a week's suspension? A. No, sir. No, sir.

Q. Now, you made some recommendations to the Board I believe you said? A. I sure did.

Q. You had just completed your recommendation when the telephone call came in? A. Yes, sir.

Q. And was that recommendation that they be suspended for the rest of the semester? A. No, sir, I told the Board that they had a job to do and all I was asking is for leniency; I made no recommendation as to what they should do because that is their job. All I wanted to do was the girls that they really feel the [7] girls were sorry and I think I need to put this in—I talked with those three girls and each one says that they were real sorry that they had done what they had done and that they would never do it again, then when the call came in I did not know which girl but here is my thinking, if one has already gone against what I asked them not to do—and I made this statement—for God's sake, girls, don't let us down, we are going to bat for you, don't let us down. Less than three hours one had let us down. Now, I did not know which one but I felt if one had, how was I to know the other two would not, so I withdrew my recommendation. I said "Board, do whatever you feel you have to do." I washed my hands of it after Mrs. Powell said she did.

Q. Thank you. Now, you have since learned of course, I hope, that Virginia and Peggy were not involved in the telephone call, have you not? A. Yes, sir.

Q. Now, then, you still feel they should be punished just as severely as the one who was involved? A. Sir, I don't think my feelings has that much to do with it now.

Q. I am just asking if you had known at the time that you were making your recommendations there, if you had known **[8]** it was Jo Wall only, that the other two children were home in bed or home crying about what had happened, if you had known that would you have gone ahead with your recommendations to the Board? A. I do not know that.

* * * * * * *

Q. Now, then, Mr. Waller, when these three girls came to you with Mrs. Powell and you got your first information of this problem and I assume that was your first information? **[9]** A. Yes, sir, it was.

Q. Did you make any effort to find out what type of beverage it was that these children had bought? A. Sir, if it was alcoholic beverage which they said and one of the girls stated it was twenty percent alcohol then I thought that was proof enough and that is what I made my decision on.

Q. So you based your decision on what these three fifteen year old girls told you about the contents of a bottle of alcohol or a drink? A. Yes, sir, I did. If they knowingly tell me they came on campus with the intent of putting it in the punch and it is twenty percent alcohol and they said it was malt liquor then I felt that was enough because I had a boy who came on with beer and I expelled him.

Q. Were you assuming after you talked with these three girls that the drink that they had served there was twenty percent alcohol? A. That is what they said.

Q. And that is what you acted upon, of course, that is the only information you had, isn't that right? A. Yes, sir. That is all the information I had is what the three girls had said plus what Mrs. Powell had said.

Q. Is that what you told the Board when you went before them? A. Sir, as I said a moment ago, I told the Board, the Board **[10]** had the facts of what Mrs. Powell said, all I did was make the recommendation as has been stated before. Mrs. Powell gave the presentation.

Q. Were you present when she gave the presentation? A. Yes, sir.

Q. Did she undertake to tell the Board what type of drink it was the girls had bought? A. Sir, the thing that I was—the only thing that was in my mind and hers too it was an alcoholic beverage, it does not say in the policy what percent of alcohol it has to be; that is what I was going on that it was an alcoholic beverage.

Q. You were basing that of course, as you said, on what the girls had told you? A. Yes, sir.

Q. Or what one of the girls had told you? A. All three girls.

Q. Did all three—— A. All three said it was an alcoholic beverage, yes, sir.

Q. Did all three of them tell you it was twenty percent alcohol? A. No, sir.

Q. How many told you that? A. One.

Q. Do you know which one? **[11]** A. Yes, sir, I know which one.

Q. Who was it? A. Jo Wall.

Q. What did Mrs. Powell tell the Board about the alcoholic content of the beverage? A. Sir, she just said it was an alcoholic beverage which had been put in the punch.

Q. I see, she did not undertake to tell the Board what percentage of alcohol? A. As far as I know no she did not say the percent of the alcohol.

Q. Did any other witness appear before the Board other than you and Mrs. Powell? A. No, sir.

Q. So the only information that the Board got at this meeting was what you and Mrs. Powell gave them? A. Yes, sir.

Q. And as far as you know they made no inquiry of anyone else at the meeting as to what "Right Times" contains in the way of alcohol; was there any other person there that they asked somebody out in the audience what the—or how much alcohol is in this drink? A. No, sir.

Q. Of course they did not have a bottle of it there, did they? **[12]** A. No, sir.

Q. Did not send out for a bottle either? A. No, sir.

Q. Of course neither of the children were there? A. No, sir.

Q. None of their parents were there? A. No, sir.

Q. Had not been invited, had they? A. The girls were told the Board meetings were always open and I told them that if the parents wanted to come to the Board they were welcome to come to the Board, that all Board meetings is always open. This was told those girls that afternoon.

Q. Did you call the parents and tell them? A. No, sir, I did not call the parents and tell them because I did not know we were having a Board meeting, we got it arranged, I imagine, about 6:30 or 7:00 and the reason I worked to get the Board together was so they could act Friday night so that if they did show leniency in any way that the girls could be back in school on Monday.

Q. You were trying to do the girls a favor? A. I was doing my best to, yes, sir.

Q. How did you get them together, the Board; did you call them? **[13]** A. Mr. Enlow and I both called the members, I went to see I believe it was three members.

Q. And you got it all arranged about what time? A. I would imagine around—I am not real sure but I would say probably 5:30 to 6:00 or maybe 6:30, I don't know exactly what time.

Q. When did they get together? A. 9:30.

Q. Did you notify the press? A. Yes, sir, we sure did.

Q. Any member of the press there? A. No, sir.

Q. But you did not notify these parents? A. No, sir.

Q. You said—— A. At this time may I make this statement?

Q. Sure. A. At this time I did not know what or whether the girls had even told their parents or not, Mr. Core, because those girls said "what are my parents going to do if I tell them" and I said "girls, that is up to you as to whether you tell them or not".

Q. You did not think it was incumbent upon you as a school administrator to tell those parents yourself? **[14]** A. If I take those children in my confidence in going to help them and they beg me or they tell me and each child asks me "Mr. Waller, will you not say anything at all about this" and as far as them saying something about calling the Board or asking that I not call the Board—which I would like to bring out that point if I may.

Q. Sure. A. Is that I did not tell them they could not call the Board but I said "girls, I am going to go to bat and do the best I can for you; if you call the Board what are you going to say, that I went over into Oklahoma"—and at that time it had not been established as far as I am concerned because they had told this that day, I did not know they had gone to Oklahoma the day of the meeting to get the liquor, is they said they had stashed it away on probably a previous trip to Oklahoma and it had not been established in my mind that they had gone to Oklahoma; so I asked them "what are you going to tell

the Board if you call them, that you have put liquor into the punch or an alcoholic beverage into the punch, what else can you tell them, I will do the best I can to help you", and that was my part. I did not tell them they could not call the Board members but they asked me "what should we do, how can we help, what can we do", **[15]** and so help me I was doing everything that I could to help the girls and I advised them along that line.

Q. Now, let's get on to another point then. You said a while ago that you told the parents that this suspension was automatic. I may be mis-quoting you, you used the term that the suspension was automatic? A. I did what I had to do on Friday afternoon which I expelled them because they had been on campus with an alcoholic beverage and put it in to the punch so according for me to carry out my job, the policies that we have to operate on, I have to follow them.

Q. You understand the rule to be this suspension is automatic? A. As far as I am concerned the suspension is automatic, yes, sir.

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Q. Now, Mr. Waller, you have told us on disciplinary action which you have taken against the whole class, the whole Home Ec class; you have cancelled their activities for the rest of the year I believe you said? A. Yes, sir.

[16] Q. And you put some of the other children on probation I believe you said? A. Yes, sir, not probation—just a period of good behavior.

Q. What is the difference? A. Probation goes on the permanent record and good behavior does not.

Q. OK, so you have got some of them on good behavior? A. Yes, sir.

Q. Why did you do that? A. Because I felt that these girls they could have gone to Mrs. Powell and told her which they

did not that they suspected there was alcoholic beverage in the punch and they did not go forward and tell you; this whole thing could have been stopped and made lesser, that is the reason I did what I did to all because from what so **[17]** many said I could not say for sure that everyone did not hear or in some way know by hearing some one else say that some one spiked the punch. I felt everyone, every member there had possibly heard the rumor to the effect that possibly there was alcoholic beverage in the punch.

Q. Didn't you get information from some of them that they actually drank the punch? A. Yes, sir.

Q. After they found out that it was spiked? A. Yes, sir. That they heard that it was in there and they did not see anyone put it in, they could not swear that it was in. They had heard.

Q. You never saw anybody put it in there either, did you? A. No, sir.

Q. But you believed it was in there? A. I could not definitely say it was in there, no, sir.

Q. But you expelled three girls because it was in there so didn't you believe it was in there? A. I expelled them on their confession.

Q. You believed it, didn't you? A. Yes, sir, I had to believe that. I had their word that they said they did.

Q. These girls that had heard it and believed it and drank it, now, why didn't you expel them? **[18]** A. Because I thought it was different from the standpoint is I have been at parties myself and someone would say the punch is spiked, do you always believe it? Not me, not always. Then some of the girls more or less just thought it was a joke and too, how are you going to distinguish, I questioned about thirty girls and I found that one girl was brought in to be questioned who was not even at the party and when you question a fifteen or sixteen year old

girl in many instances things come out that may not be true in every case and I am not saying anyone has told a story but I know this—that one girl was brought in who another said she knew or had heard that the punch had been spiked——

Q. Is there any of those thirty tell you that they had drank it? A. Yes, sir.

Q. After they heard it was in there? A. Yes, sir.

Q. Did you believe them? A. Yes, sir, I did.

Q. Why didn't you expel them? A. Because I thought it was of a different nature from the standpoint they did not know definitely it was in there.

Q. You said the rule is automatic? A. I say——

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[20] Q. You notice that your rule says "possession or use"? A. That is right.

Q. Now, then—— A. I would say this, that the girls did not see, they did not know definitely any alcohol was in there.

Q. They told you they did? A. No.

Q. They told you they believed it was in there? A. They did not definitely see the girls put it in there. I said "girls, are you sure that alcohol was in the punch"? "No, sir, we are not sure, we were told" and they said "everybody was saying alcohol was in the punch". I said "did you see the alcohol put in the punch"? "No, sir." **[21]** So how else could they know alcohol was in the punch? They did not see it and I determined it differently from the three girls who knowingly put it in the punch and that is how I made the judgment and I stand on it.

Q. I think we see how you made your judgment, that you based it on what the three girls told you and you believe what they told you, and then—— A. These three girls——

Q. You did not expel anyone else because you did not believe that they knew it was in there or else you feel like that even though they believed the three girls and believed it was in there that you ought not to expel them when in fact it was in there? A. By what Mrs. Powell said and these three girls and them testifying that "we did put it in there knowingly" is differently than hearing that it was in there in the drink.

Q. All right, now, then, of course do you know up to this day what the alcoholic content of that bottle right there on the Clerk's desk is? A. To me I do not know, no, sir.

Q. Then you have not made any effort to find out, have you? A. All I know is it is an alcoholic beverage.

Q. Do you know that? A. As you read it it was and as the girls said it was an **[22]** alcoholic beverage, why else would they go to a beer joint, all the way over there, if they were not going to get an alcoholic beverage; that was their intent and they said it was alcoholic.

Q. I am asking you; you was talking a while ago about what these girls knew that drank the beverage. You said you did not expel them because you did not feel like they knew. Now, then, I want to ask you if you know; have you ever known what that drink actually contains? A. No, sir.

Q. All right, now, then, not knowing of course you could not know how much alcohol was in a gallon and a half of water after two of those bottles were poured in it, would you? A. No, sir. But I know there would be alcohol in an alcoholic beverage.

Q. Are you sure not knowing whether there was any in that bottle? A. No, sir, I could not be definitely sure but I took the girls' word for it. The girls said it was and if they admitted it was that is good enough for me.

Q. And you expelled them as alcoholic experts, didn't you? A. Sir?

Q. You treated them as though they knew all about what was in that bottle and expelled them on what they told you, **[23]** didn't you? A. I expelled them on what they said, yes, sir. I sure did.

Q. Now, then, I want to ask you about a meeting of the School Board on March 2nd, Thursday night of last week; where were you Thursday night of last week? A. I was in the building.

Q. Why didn't you come to the meeting? A. Because I was right in my office there, if they needed me—I told them that if they needed me, I asked Mr. Enlow if I should go and the attorney asked him if I should go and they said "if we need you we will call you", so I worked in my office about ten yards from where the meeting was being held. They could have got me at any time.

Q. But you never did come in the meeting? A. No, sir.

Q. And the reason of course was you was not asked to come in? A. No, sir, I was not asked.

Q. Well—— A. But I was available.

Q. Did you see me while I was there? A. No, sir.

Q. For the record I did not see him, Your Honor, and did not know he was in the building. Now, of course, not **[24]** attending the meeting you do not know whether Mrs. Powell was there or not? A. Yes, Mrs. Powell was definitely there.

Q. She was there? How do you know that? A. She was working in her room.

Q. She was in the building too? A. Yes and was available.

Q. Do you know why she did not come to the meeting? A. No, sir.

Q. You don't know when this rule was adopted; it was adopted before you came there? A. Yes.

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Redirect Examination, by Mr. Hardegree

Q. Mr. Waller, did anybody make any request of you to be at the meeting on that occasion? A. No, sir.

Q. Mr. Core did he get in touch with you to make any such request? A. No, sir.

Q. On the occasion of the meeting itself, did you have any information that you was asked for that your presence was required or requested? A. No, sir.

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[26] **MR. S. L. ENLOW,**
after first being duly sworn, testified as follows:

Cross-Examination, by Mr. Core

Q. Mr. Enlow, how long did you say you had been at Mena? A. Six years or will be, this is my sixth year as superintendent.

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Q. How many students have been expelled at Mena since you have been there? A. Mr. Core, I am not positive. There are five students that have been suspended or expelled this year, there have been others, just how many I am not sure.

Q. Are all of these expulsions for the balance of the school term every time? **[28]** A. There have been some suspended that were for less than the school term, yes, sir.

Q. During your time at Mena how many have been expelled for the balance of the school term? A. I am still not sure how many were; five during this school term not counting the three girls in question, and there have been others but just how many I am not for sure.

Q. You were superintendent during that time, weren't you? A. Yes, sir.

Q. You knew about each case? A. Yes, sir.

Q. Would you say there has been as many as six others during your seven years? A. Perhaps, more or less. I still do not know the exact number.

Q. Would you say there has been as many as a dozen? A. I would not think so.

Q. There has been less than a dozen? A. I think so.

Q. That is over a period of seven years? A. Six years.

Q. So we have an average of at least less than two per year on that basis, that is just ordinary mathematics? A. (No answer).

[29] Q. With reference to the meetings that the Board has, are you the official that gives the notice to the newspaper and the radio? A. Yes, sir.

Q. Do you also get the notice out to the Board members? A. Yes, sir.

Q. So you are more or less the secretary in charge of giving notice that you are going to have a Board meeting? A. That is true. Just a reminder, it is standard, the regular meetings are standard, they are on the calendar.

Q. On the occasion of the Board meeting the night of February 18th, did you notify any of these parents that the Board was meeting that night? A. I did not.

Q. You do have available to you I am assuming, Mr. Enlow, in the school records the telephone numbers of the parents? A. They were available to the principal.

Q. No problem about calling them if you intended to? A. No more trouble than any other phone call I would not imagine.

Q. On the occasion of the meeting there of February 18th I am assuming that this was the main order of business was the disciplining of these three girls? A. This is true.

[30] Q. Were any of the other girls discussed that had drank any of the punch or done anything of that nature? A. No, sir, to our knowledge this had not come up at this time.

Q. At this time you were going purely on what you had been told by Jo Wall and Virginia Crain and Peggy Strickland, is that right? A. What has been related to me by Mrs. Powell and Mr. Waller.

Q. And you understood, I am sure, that they had gotten their information from the three girls? A. That was my understanding.

Q. And were there any witnesses at that meeting other than Mr. Waller and Mrs. Powell who claimed to have any information about it? A. There was not.

Q. Of course none of the parents were there? A. That is true.

Q. And neither of the three girls were there? A. That is true.

Q. And neither were any of the other girls that you later learned may have had some part in it? A. That is correct.

Q. Now, Mr. Waller testified about a telephone call that came in; up until the 'phone call came in had you said **[31]** anything yourself to the Board about the case? A. Merely introduced Mrs. Powell and Mr. Waller to the Board, that they would explain in detail what the situation was.

Q. And did Mrs. Powell go on first with her version? A. She did.

Q. Did she make any recommendation for leniency? A. Yes, she did.

Q. What did she recommend in that connection? A. She went into detail as has already been covered that she asked for leniency as near as the Board—to the extent that the Board was able to operating under their policy recognizing they had

the responsibility but she was appealing to them if there was room for leniency that it be given in this case.

Q. Was this on the theory that that rule made it mandatory that they be expelled for the remainder of the semester? A. I am not sure about this. I do not think so necessarily.

Q. You could not get from her recommendation whether or not she was recommending that it be less than the balance of the semester? A. I think she realized that it could possibly be less and she was appealing to them to make such a decision, if possible.

Q. For it to be less? **[32]** A. Yes, sir.

Q. What about Mr. Waller, did he finish his recommendation? A. Yes, sir, as far as I know he had completed it.

Q. And were his recommendations similar to those of Mrs. Powell that leniency be shown the girls? A. They were.

Q. You actually took the 'phone call that came in? A. I did.

Q. Who made that 'phone call? A. Mr. Powell, who is the husband of Mrs. Powell, also a teacher in the school system.

Q. What kind of a teacher is he, what position? A. He is a science teacher.

Q. And he purported to relate to you over the telephone something that had happened where? A. Outside the gymnasium.

Q. That same evening? A. Yes, sir.

Q. Did he claim to have witnessed it himself? A. He did not.

Q. Some one had just told him about it? A. That is true.

Q. All right, and in relating this to you did he tell you whether or not any of these three girls were involved according to his information? **[33]** A. He did.

Q. Which one did he mention? A. Jo Wall.

Q. Did he mention either Virginia Crain or Peggy Strickland? A. He did not.

Q. Now, then, after you received this information what did you do? A. I reported it to the Board, the nature of the conversation, the information that Mr. Powell had given me.

Q. Did you give them a pretty full rendition of it? A. I think so.

Q. You did not tell them that Mr. Powell had mentioned only Jo Wall? A. I did not.

Q. But you did tell them that it was one of the girls that was involved in this same thing that they were considering? A. Yes, sir.

Q. But you did not tell them which one? A. I did not.

Q. Did they ask you which one? A. Later but not at that time.

Q. Now, did this information which you related to the Board have any noticeable effect on either Mrs. Powell or Mr. Waller? **[34]** A. Yes, sir. They were concerned about the fact that one of the girls—and they did not know who—that one of the girls had been involved in another incident.

Q. And what did they say to the Board about that, if anything? A. I think as has been related that Mrs. Powell said "well, I just wash my hands of it" and Mr. Waller said "I withdraw my recommendation."

Q. Up until that time had the Board voted on whether or not to expel these three children? A. They had not.

Q. Did they later vote on it? A. Yes, they did.

Q. And they voted to expel all three of them? A. Yes, they did.

Q. And you let that all go on there without telling them that only Jo Wall had been mentioned to you on the telephone? A. That is true.

Q. Now, then, the meeting of March 2nd, which was called at my request, I believe; you called that meeting, did you not? A. No, sir. I did not call the meeting. I talked with the Board concerning it and Mr. Stevenson called the meeting.

Q. Did you get out any notices? **[35]** A. I did contact the members with such a notice, yes, sir.

Q. Had there been any meeting of the Board between February 18th and March 2nd? A. There had not.

Q. Had you been in contact with the Board members yourself? A. Yes, sir.

Q. Had any two or three of them met on this matter? A. No, sir, not to my knowledge.

Q. Now, did you have a teachers' meeting any time on March 2nd, earlier during the day of March 2nd or March 1st, did you have a teachers' meeting? A. I do not believe so, Mr. Core. I am not sure. We had a meeting along about that time but whether it was that same day or not I am not sure.

Q. Did you yourself or someone at your direction tell the teachers not to attend that meeting on March 2nd? A. Tell the teachers not to attend?

Q. Yes. A. No, sir.

Q. Did not tell any teacher not to attend? A. No, sir.

Q. Did you know that I had called Peggy's home room teacher, Mrs. Gazell, and ask her to be present, be there? A. Yes, sir.

Q. Did you talk to her about that? **[36]** A. I talked with her later that day; she came to me, I did not send for her, she came to me.

Q. What did you tell her about attending any meeting that night? A. I told her she did not have to attend; if she cared to certainly she would be welcome to attend.

Q. Did you tell any other teacher not to attend? A. No, sir, I did not.

Q. Now, on the occasion of the meeting of course you did attend, didn't you? A. Yes, sir.

Q. You took the minutes of the meeting? A. Yes, sir.

Q. Did you know that Mr. Waller was there in the building? A. I did.

Q. Did the Board know that? A. Yes, sir.

Q. Did you know that Mrs. Powell was there in the building? A. Yes, sir.

Q. Did the Board know that? A. I think so. Some of them at least.

Q. Mrs. Gazell, did she happen to be in the building too? A. Not to my knowledge, no, sir.

Q. She is the home room teacher for these girls, isn't she? **[37]** A. Yes, sir.

Q. I take it, Mr. Enlow, that you did not have anything to do yourself with suspending these children? A. I did not make a recommendation at all.

Q. Did the Board have before them at any time prior to voting to suspend or to expel, did they have a bottle of the liquor in question? A. Not to my knowledge, no, sir.

Q. And of course Mr. Waller did not know what to tell them what was in it, did he; he did not know what was in it or did he undertake to tell them what was in it? A. I believe Mr. Waller reported to you a while ago what he knew and I have nothing to add to that.

Q. The same thing with Mrs. Powell too, you don't have anything to add to what she said or he said? A. No, I do not.

Q. There was really no proof before the Board as to what the alcoholic content was, was there? A. Not unless it was the Board's own knowledge concerning this, there was none present.

Q. You did not drink any of the punch yourself? A. No, sir, I was not present at the meeting.

Q. That is all.

[38] Q. How long has that rule been in effect? A. Since 1967, January 10.

Q. And you, of course, was there at the time it was adopted? A. Yes, sir, I was.

Q. Can you recall whether or not it was adopted at a regular meeting and in the regular course of business? A. No, sir, I am not positive whether it was a regular meeting or not; I think so.

Q. Your minutes would reflect that, would it not? A. Yes, sir.

Q. Have you expelled anybody other than the Zink boy and these three kids, have you expelled anybody else under that rule? A. No, sir, I don't believe so.

Q. Your witness.

The Court: Let me ask one thing or so and then you can have him back. Mr. Enlow, did you write the manual of policy or did you inherit it?

A. No sir. It was written, it has been written since I have been there.

[39] The Court: Since you have been there?

A. Yes, sir.

The Court: All we have in this case here, and I am sure you have seen it, is one page from it. Is there a provision in the entire manual for a hearing before the Board such as a petition for re-instatement?

A. Yes, sir, there is a provision. I am not sure whether it says re-instatement of students, there is a provision for hearing complaints from any person.

The Court: In fairness to both sides has that provision been followed in this case, or procedure?

A. Yes, sir, I think so.

The Court: That is all I wanted to know. You did pursue the course set forth in the manual for the hearing to review after Mr. Core called you?

A. Yes, sir.

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[41] **MR. ED W. STEVENSON,**
after first being duly sworn, testified as follows:

Cross-Examination, by Mr. Core

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Q. You mentioned that in your opinion there would be complete havoc among the students if these children are re-instated; did I understand you right? A. I made the statement, Mr. Core, that I believe that we might have havoc in our school system trying to enforce discipline if an injunction was granted due to the fact that other students would try to bring alcoholic beverages on the campus too. I don't think there is room for that in our school system.

Q. You mean the children down there at Mena are just waiting for an indication that it is alright to bring alcoholic beverages on the campus and they are just suddenly all will bring a whole bunch of that on there? [42] A. No, sir, I did not say that, you said it.

Q. I think that is what you said? A. No, sir, I do not believe it was.

Q. Don't you know that the sentiment among all the people down there is that you have been too severe on these children? A. Mr. Core, I think you are mistaken there. I do not think the sentiment runs a hundred percent that we have been too hard on these youngsters. I think that if you will check around that you would find that the sentiment lies on both sides of the fence so to speak. There are those that think we have done the right thing.

Q. But just about ninety percent of the sentiment that think it is too severe? A. No, sir, I would not say it was.

Q. It is well over half would you say? A. I do not know.

Q. I want to ask you, Mr. Stevenson, you presided at the meeting of February 18th and also March 2nd? A. That is correct.

Q. You have heard Mr. Waller testify and Mr. Enlow testify about what occurred at both of those meetings? A. Yes, sir.

Q. Are you agreeable with Mr. Waller and Mr. Enlow that two teachers had made recommendations for leniency up [43] until the time that Mr. Enlow reported the telephone call? A. Yes, sir.

Q. And do you feel that the telephone call had any effect on those two people, Mrs. Powell and Mr. Waller? A. Yes, sir, I am sure it had an effect on them.

Q. You have heard Mr. Waller say that he withdrew his recommendation at that time? A. Yes, sir.

Q. Did he do that? A. Yes, sir.

Q. And that Mrs. Powell said she washed her hands of the whole thing at that time? A. Yes, sir.

Q. Did she do that? A. Yes, sir.

Q. And then did you hear any more witnesses after that about it? A. No, sir.

Q. You then took your vote? A. No, sir, we discussed it in the Board meeting.

Q. You discussed it among the Board members? A. Discussed it among the Board members, that is correct.

Q. What else did you do before you voted? A. We, as I say, had a discussion of the matter at that point [44] we asked if any punishment would be recommended by any of the members. There was no other form of punishment recommended, at that point it was unanimously agreed that the students would be suspended for the balance of the semester.

Q. Were you advised that up until that time they had been suspended for only one week? A. Yes, sir.

Q. So the Board upon the basis of the information that it had acquired at this meeting suspended them for the balance of the term? A. Yes, sir.

Q. At that time you had not talked to Mr. Bob Shaw, had you? A. No, sir. I had not.

Q. You had not seen a bottle of that Exhibit No. 3 over there, had you? A. No, sir, I had not, Mr. Core, but I knew it was alcoholic and you know that it is alcoholic; malt liquors are alcoholic, no question about that.

Q. Will you let me testify about my knowledge—— A. Excuse me.

Q. Let me ask you about yours, how do you know it is alcoholic? A. Because I checked with the Prosecuting Attorney in Mena, [45] Arkansas, and I have checked with several other people and, in fact, you yourself admitted a while ago that it had 3.1 percent.

Q. Now, Mr. Stevenson, if you don't mind let's stick with your knowledge. A. All right.

Q. Now, these people that you checked with, as I understand you, all that checking was done after that meeting on February 18th? A. Yes, sir.

Q. You had not checked with anybody before the meeting of February 18th? A. Yes, sir.

Q. Who had you checked with? A. I am agreeing with you, I said yes, sir, and that is right.

Q. In other words yes, sir, you had not checked with anybody? A. Yes, sir.

Q. Have you drank any of it yourself? A. No, I have not.

Q. Now, you said that when you go to Dogpatch it is just common knowledge that when you go over there what ever you bring back is intoxicating? A. No, I did not say that. When you bring malt liquor back **[46]** from over there it is intoxicating.

Q. I understood you to say that it is common knowledge around the country where we live that when you go to Dogpatch and pick up something it is intoxicating, did I understand you wrong? A. I believe I did say, yes, sir, if we want something that is not we just go down to the store and buy it.

Q. Do you buy your intoxicants over at Dogpatch? A. No, sir, I don't.

Q. Do you know whether you can get soda-pop, coke, things like that over there? A. I imagine they do sell soda-pop and coke, yes, sir.

Q. And of course that is not supposed to be intoxicating, is it? A. No, sir, it is not.

Q. Now, then, if you based your conclusion of what these kids put in that punch was intoxicating on the mere fact that it

was bought at Dogpatch don't you think you would have been jumping at a conclusion? A. Yes, sir, I do.

Q. But yet that figured in your decision, didn't it, the fact that they had gotten it over there? A. No, sir I do not believe it did, Mr. Core. I think what figured in our decision was the fact that this was malt liquor that was bought in Oklahoma——

[47] Q. How did you know it was malt liquor? A. We were told that it was malt liquor and the girls freely admitted that it was malt liquor and that they had secured it in Oklahoma.

Q. When did you talk to the girls? A. I did not talk with the girls.

Q. Let's talk about what you knew on February 18th. A. All right.

Q. Who had told you it was malt liquor on February 18th? A. Mr. P. T. Waller.

Q. P. T. Waller—— A. Mrs. Curtis Powell.

Q. Anybody else? A. Mr. S. L. Enlow.

Q. Anybody else? A. No, sir.

Q. That is all. Now, Mr. Waller said that Mrs. Curtis Powell told you that it was intoxicants; do you remember her saying whether it was intoxicating liquor or not? A. I remember her saying that they had gotten malt liquor from Oklahoma, yes, sir.

Q. So it was three people you heard say that? A. Yes, sir.

Q. And on the basis of that information what you got from those three people, Mr. Enlow, Mr. Waller and Mrs. **[48]** Powell you and the other members of the Board took your action? A. Yes, sir.

Q. The telephone call that came in during the meeting, you heard him testify he did report to you? A. Yes, sir.

Q. Do you remember that he did report to you? A. Yes, sir.

Q. You heard him testify that he did not tell you which girl was involved in that? A. Yes, sir.

Q. Is that true he did not tell you? A. Yes, sir. That is true.

Q. Did you ask him? A. No, sir.

Q. Did any of the Board members ask him? A. No, sir.

Q. Did he say one girl or three girls? A. He did not say.

Q. What did he say? A. He just told us that he had a call to the effect that there had been an altercation at the gymnasium following the basketball game, one of the girls involved or the **[49]** girls involved—I could not quote you verbatim—one of the girls involved, it occurred after the basketball game, at that time the recommendations were withdrawn by the administration.

Q. You don't remember whether Mr. Enlow said one of the girls involved or the girls involved? A. I do not, no, sir.

Q. Did you assume that all three of them were involved? A. No, sir, I did not.

Q. Would it have made any difference to you? A. No, sir, I do not believe it would have.

Q. Did the telephone call make any difference to you? A. No, sir, it did not.

Q. So you disregarded it altogether what Mr. Enlow had said? A. No, sir, I did not disregard it.

Q. What did you do about it, what effect did it have on you if you did not disregard it? A. As Mr. Enlow told you a few moments ago we are not bound by Mr. Enlow's recommendations.

Q. I understand that but I am asking you a different question. A. All right.

Q. What effect, if anything, did what he reported to you have on your decision? A. Well, I guess it would be hard to say that it had a good effect on our decision but as far as adversely affecting **[50]** the decision of the Board as such I could not comment on that. I can only speak for myself. I cannot speak for the other members of the Board.

Q. Up until the 'phone call came in there were only two teachers there that purported to have talked with the girls were recommending leniency? A. That is correct.

Q. And didn't you tell Mr. and Mrs. Justice that if anybody had gotten up and asked for leniency the Board would have granted it? A. No, sir, I did not.

Q. You deny having told that? A. I deny that, yes, sir.

Q. With two of your teachers there recommending leniency are you telling me that the Board would go ahead and suspend them for the balance of the term with the only two teachers before you recommending that you be lenient? A. Would you state your question again?

Q. Let's assume the telephone call had never come in? A. All right.

Q. And you act on the basis of having two teachers there that are purported to have talked to the girls—— A. Yes, sir.

Q. Both of them recommending leniency; are you telling me that the Board would have gone ahead and suspended them **[51]** for the rest of the term? A. It is possible, yes, sir.

Q. It is also possible that they would have followed the recommendations too? A. That is right, it is possible.

Q. Of course you can't say and I can't say? A. No, sir, I can't.

Q. Now, the investigation that you conducted of course was done about the alcoholic content was done after the children had been suspended for the rest of the term? A. I believe it

was done on Saturday night after they had been suspended on Friday, Mr. Core.

Q. And you got that from Mr. Bob Shaw who is Deputy Prosecuting Attorney? A. That is correct, yes, sir.

Q. And he told you that he prosecutes them all the time for possession of it? A. Yes, sir.

Q. Did he tell you that he knew what the alcoholic content was in it? A. He told me that it was a high alcoholic content.

Q. Did he give you any percentage or anything like that? A. No, sir, he did not.

Q. Do you know Mr. Bob Show to be an expert on alcoholic? **[52]** A. No, I don't.

Q. Did you conduct or consult anybody you did consider to be an expert on that? A. No, I took the unopened bottles, completely sealed, and turned it to Mr. Bob Shaw at that time and asked him to send it to the State Board of Health to have it analyzed.

Q. Have you gotten any report back? A. No, I do not have any report.

Q. Now, Mr. Justice brought you one of these bottles, didn't he? A. That is right.

Q. Did you read the label on it? A. Yes, sir.

Q. Did you notice it was bottled by Theodore Hamm Company, Minneapolis, Minnesota? A. Yes, sir.

Q. Did you call them? A. No, sir.

Q. Don't you think they would know what was in it? A. I imagine so, yes.

Q. Now, then, that it is 3.1 by weight alcohol and that the twelve ounce bottle, two of those twelve ounce bottles were put

in a gallon and a half of water how much alcohol have you got in there? **[53]** A. I could not say, Mr. Core, I do not know.

Q. Isn't it about two-thirds of an ounce? A. Possibly so.

Q. In a gallon and a half of water? A. I don't know.

Q. Do you consider that an alcoholic beverage? A. Mr. Core, I consider the fact that that is an alcoholic beverage and that it was put into the punch, yes, sir, I do.

Q. Don't you think you should have gone into those questions before you kicked three kids out of school for the rest of the semester? A. We investigated that possibility as I told Mr. and Mrs.—or Mrs. Justice the following morning and the Reverend Jordan at my home if that was determined not to be an alcoholic beverage that it most likely would shed a different light.

Q. Don't you think you should have done that before you kicked them out? A. No, sir.

Q. And you have not done it yet, have you; you don't know what is in that bottle, do you? A. No, sir, but I have exercised all due care to find out.

Q. You have gone ahead and suspended, taken part in expelling three kids for the rest of the year without knowing, have **[54]** not you? A. Without knowing the exact content yes.

Q. When all it would have taken was a telephone call to St. Paul, Minnesota, and you would have found out what was in it? A. I guess you are right.

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In the United States District Court
Western District of Arkansas

(Title Omitted in Printing)

REPORTER'S TRANSCRIPT OF THE COURT'S FINDINGS OF FACT MADE ON MARCH 7, 1972

(Filed on April 10, 1972)

PROCEEDINGS OF MARCH 7, 1972

[2] The Court: No Court ever likes to decide cases of this kind and if, ten years ago, anyone had told me that a Federal Court would be hearing a case concerning an Arkansas school I would have felt that the man was crazy until the decision in the case of Brown against Board of Education of Topeka which was actually in 1954 and a lot longer ago than I said. I think that we would have been shocked that anybody but the State of Arkansas had anything to do with its own school system because it is the Arkansas School system and there is no disposition by this District Court to intervene in any activity of the public school system, that is not actually required. All right, with that as a background this brief comment upon the facts in this case; it has been shown to the satisfaction of all that two pretty little girls in the 10th grade who are right at the age when they develop more quickly than the boys and they think they are young ladies, they are older than their age, actually, indulge in a childish prank and decided to spike the punch. I think their testimony admits that is what they planned to do alright. All right, under the laws of Arkansas, Article 14, Section 1, of the Constitution provides for a free **[3]** school system and then the laws of Arkansas contain a compulsory school law and these young ladies come within it. So they not only have the right to go to school they are compelled to go to school. We have some other statutes that deal with the age

of students permitted to attend school. I doubt now that anybody above the age of 21 can be permitted to attend if there are adult education programs. That would sound like it would be without restrictions but it is not without restrictions. Arkansas, by its Statutes, Title 80-1656, provides that nothing in the Act shall be construed to limit a local school district's power to adopt reasonable rules, regulations and policies, and then it goes on and quotes quite a bit further than that. We are in a strange situation in this case. This is an application for a temporary restraining order. Under Rule 65 of the Federal Rules of Civil Procedure under which a temporary restraining order could be issued if there is immediate danger of, as we say, an irreparable injury or immediate injury, loss or damage, which would happen before a trial could be tried on its merits. That puts the burden on Mr. Core and his clients to show such a situation. At the time we are dealing with a case where two young ladies are required to attend school and the school has **[4]** passed regulations which the school has the burden of showing it had a right to promulgate. It will be the finding of this Court that the School Board not only had the right but did promulgate a Code of Regulations, if you want to call it that, or a manual that provided that pupils found to be guilty of any of the following shall be suspended from school on the first offense for the balance of the semester and such suspension will be noted on the permanent record of the student along with reason for suspension. Item Four under that is listed the use of intoxicating beverages or possession of same at school or at a school-sponsored activity. The Court finds that the school had the right to adopt that rule; they did adopt that rule, and that the School Board had reasonable grounds to believe that that rule had been violated at the time it took its initial action in this case. Consequently the temporary application—the application for temporary restraining order will be overruled, denied. Maybe from here on out I should explain that it is not the Court's policy or prerogative to lecture anybody, but we have this that I think should be called to everybody's attention. You

can have a constitutional rule and then if it is unconstitutionally applied [5] or mistakenly applied you could do just as much harm to a pupil as if you had intentionally done something. The Supreme Court of the United States has held over and over that the depriving of any student of school days can indeed cause very serious harm. All right; now, having denied this Order let me call your attention to this, I have had grave questions throughout this trial as to whether this concoction from which these students got such a terrific charge was ever an intoxicating beverage. I am just inclined that on a hearing on the merits of this case when we ever get to it I will be interested to see what that is because as both Mr. Hardegree and Mr. Core know the term "intoxicating beverage" as used in the manual is not defined but the term "intoxicating liquor" is certainly well defined under the Arkansas laws and it provides that it must be a content in excess of 3.2 or 5 percent by weight and I am afraid the School Board is or has made a mistake here but I do not see any constitutional thing within the jurisdiction of this Court that requires any intervention by the Court at this time on the temporary application. If it ever reaches the matter of proof on the intoxicating angle I don't think you will ever be able to prove that thing there—in spite of the fact that these little girls giggled around [6] and got themselves kicked out of school on such a silly thing—I don't think you will ever be able to prove that that stuff is intoxicating. I will just pass along that to you. Now, gentlemen, you are in here because I think rather unfortunately a number of years ago the Supreme Court of the United States declared that a school is a state agency. We thought all the time that our public schools down here were our own private little district schools that we could operate paternalistically and supervise our own children kind of in the manner that we wanted to. Unfortunately they have said the public schools are a state agency which means that all policy has to comply with the provisions of the 14th Amendment which means that it must be applied equally. Everybody has got equal protection and you cannot apply it one way one

time and one another. From that sprang up all of our troubles of integration and either coincidentally or caused by it plus the coincidents, I say incidents or cause, one or the other long hair, extreme hair styles, oddities of dress, our daughters go from short skirts, so short you cannot see it one day to sweeping the ground the next day. Idiosyncrasies of dress, all of that has gone along with a kind of a spirit of rebellion, we since run into in all the schools, and integration [7] I think blew it all into big flame. Now, these little girls at the age of 16 are too big, too mature, for their parents to paddle. If these were two boys in this case I would say to the parents "take them home behind the woodshed and apply a little bit of wood to their seats" and I think this whole thing would be solved. But you cannot do that in the South where we have a double standard, one for boys and one for girls. I don't think the little girls are trying to tell on anybody else. I don't think that Mr. Core wants any other child kicked out of school. I don't think the parents are trying to tell on anybody else or cause anybody any trouble. The parents are trying to help their children because going to school right at this time is very important. I do not think it is irreparable. These two little girls impress me as being smart enough that they could take correspondence work if necessary and move right along with their group. I think they could. I hope that the School Board down at Mena will meet and give this matter serious consideration and if these young ladies see fit to come forward and apologize and they appear to me to be completely repentant, I bet there is not a soul in the courtroom that has heard the proof that does not have their charitable instincts going out to them. We just say [8] these children are being punished too severely, but that is one side of it and running a good school down at Mena is another side of it. I don't find there is a thing unconstitutional in this manual. I think that it is completely constitutional. If there is anything unconstitutional it is the manner in which the Board has enforced it in this case. Let me say this, gentlemen. It is a whole lot like your traffic officers have to be in a city or in a town,

say, in Mena, an officer who does not instinctively know the difference between an innocent traffic offender and an habitual criminal who is violating peoples' rights has no business being given an arrest book and authority to arrest people on the streets, just ought not to have them. If you have officers who just cannot tell that difference then I think you should look about your officers. Now, you say well, the being on the School Board is a great responsibility, it is a great honor, a thankless one; I personally have served on a school board ten years or some longer, I would say it is the most thankless job ever in the world, I think that everybody who thinks that all of his friends and neighbors love him ought to have to serve on a school board one time so that he will know that they don't; they don't love him, they don't approve of what he does and they question **[9]** his conduct and question his motives. I don't think they intend to do it uncharitably but you are just placed in such a thankless position by reason of being there. Now, let me say this to the School Board; you are elected, some of you may have had appointments, regardless of whether you want to be elected again remember that the Courts have not gone so far into your affairs that we won't let you run your schools. I cannot say that it won't reach that point. Many people tell me that our public schools are right on the verge of being nothing but a civil service thing where all of your teachers will be civil service employees and the Federal Government will wipe out the other agencies of the state. I do not believe it, I hope they will swing back the other way because we need our schools to fulfill the paternal side, the family side. The reason I don't think they are right about it is because I don't think the mothers are ever going to consent to babysit their own children, they are going to send them to school just as quickly as they can and our schools have been performing a wonderful service. I have criticized a lot of people here. I don't know, they may say that their School Board is completely knowledgable and their actions concerning this childish prank is justified, and, on the other hand, there will **[10]** be some that take a look at their School Board that serves

without pay and the giving of their time, say, "By the way, I never saw such a bunch of old fuddy-duddies that are not up to the times". That brings me down to another thing, to your manual. Now, gentlemen, this manual is binding on your school executives and administrators. The school administrators have no choice but do just what they have done because that manual is binding on them, but to the School Board that manual is not sacred in any manner. You enacted it, you can change it, you can abolish it, you can amend it, you can make it fit the situation and, among the other duties that you have running that good school down there, is to make those things fit your community. I encourage you to do that. I hope you will look at it and that you will say "by the way, this is a little too harsh a remedy." Now, a few generations ago we thought nothing of the electric chair, thought nothing about execution, thought nothing about pretty severe penalties. Now then the Courts all over the land are saying that is cruel and inhuman punishment, not any such thing as capital punishment. Adapt your Mena schools to the times. I do not want you to think that because you passed something, said something about an intoxicating liquor that that is sacred and **[11]** cannot ever be changed. I know that you have had the same experiences that I have had. I live in a small town, not as large as Mena. At the end of school I have always wondered, you know the boys particularly, when they march out the ones that are at the head of the line the first thing is their cap goes flying through the air and you hear a lot of hollering. I have always wondered just how beer was in that "yippie". You cannot close your eyes to the facts of life. This may be one of those cases where you need to temper justice with mercy. I want you to go ahead and run your school. A long time ago a real smart man said "Let he among you that is without sin cast the first stone." The School Board needs to bear this in mind in this case. It is not a part of the Court Order but I encourage the School Board to meet immediately and see if this matter can be resolved in a practical way. It would be a grave injustice if this were not an intoxicat-

ing to keep two girls out because the School Board has made a mistake about it and it takes a big School Board to say to a community "we have looked into this and we are wrong, we are just slapdaub wrong." If we are wrong let's say so and get on back to our business and these young ladies and this other one come forward, Mr. Zink, and convince you that they are trying to do right. Sometimes a [12] real good citizen as a child has given you a little bit of trouble in the past. We have had people who were convicted of a crime make good citizens. Now, we are through with the speaking part of it. Mr. Core, your application will be denied and this will be transcribed and will constitute the Findings of Fact. If you desire to appeal I would include in it those provisions that are required and the Order for Appeal will be perfected.

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

ORDER

(Filed March 7, 1972)

On this March 7, 1972, the above entitled cause comes on for a hearing on plaintiffs' motion for a preliminary injunction, the plaintiffs appearing by Mr. Ben Core, their attorney, and the defendants appearing by Mr. Joe Hardegree, their attorney.

Upon consideration of the testimony adduced at the hearing and the exhibits introduced, the court announces orally from the bench its findings of fact and conclusions of law. Pursuant thereto.

It Is Ordered and Adjudged that plaintiffs' motion for a preliminary injunction be and it is denied.

/s/ PAUL X. WILLIAMS
United States District Judge

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

ANSWER OF DEFENDANTS

(Filed March 10, 1972)

Comes now S. L. Inlow, Duddy Waller, John P. Wood, Ed Stevenson, Bob Philpot, Jim Ayleshire, Raymond Stroud, Bill Plunket, Rachel Goforth and Mena Special School District, and for answer to the complaint filed herein would state and show unto the Court as follows:

1. The Defendants and each of them denied generally and specifically each and all of the material obligations of the complaint filed herein by Peggy Strickland, a minor, and others, and ask that the Plaintiffs be put upon strict proof of all such allegations not specifically hereinafter admitted.

2. The Defendants admit that S. L. Inlow is Superintendent of Schools at Mena, Arkansas, and that Duddy Waller is Principal of the High School at Mena, Arkansas, and that the remaining individual Defendants are members of the School Board of Mena Special School District, and that the individual Defendants are residents of Polk County, Arkansas. It is further admitted that the Plaintiffs in this action, Peggy Strickland and Virginia Crain, were students in Mena High School prior to February 18, 1972, and were at that time expelled by administrative action and by action of the Board of Directors of Mena Special School District.

3. The rule or regulation set out in Paragraph Six of the Complaint filed herein is in fact a rule, guideline or policy of the Mena Special School District, adopted by the Board of Directors of the Mena Special School District in 1967.

Wherefore, the Defendants pray that the Complaint filed herein be dismissed and that the Defendants have their costs of Court incurred, and other relief to which they may show themselves to be entitled.

(Signatures and certificate omitted)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

PROCEEDINGS OF APRIL 7, 1972
Before Honorable Paul X. Williams, United States District Judge, Held in Connection With Plaintiffs' Motion to Amend Complaint

(Transcript filed September 8, 1972)

The Court: Before you sit down have you checked the report in the Mena Evening Star concerning the four boys that were suspended; it is the March 27th's, Monday, is the date of issue?

Mr. Hardegree: Yes, sir.

The Court: Does the School Board contend that is an incorrect recitation of what happened; is it in error?

Mr. Hardegree: Not that I know of, sir.

The Court: Mr. Hardegree, could you arrange for the School Board meet and let these little girls make an apology and ask to be re-instated and then ask if Mr. Stevenson would put the same question in the same manner as he did in the other case, that is, he asked for a Motion to uphold the expulsion. After Mr. Bob Philpot made the Motion they never could get a

second. Could [3] you arrange for that to be done and then advise the Court next week?

Mr. Hardegree: I can if the Court so requests.

The Court: I so request and I invite them to reconsider the case of the boy that was expelled before but since he is not a party to this lawsuit I don't have anything to do with that but as a matter of principle. You know that I have only been concerned in this case with two things, whether or not a constitutional question has been raised, and I think that my ruling at the preliminary hearing pretty well settled that the Board's regulations were within the constitutional framework and I am convinced that is right; but I am confronted with a question of whether or not it is being constitutionally enforced. Now, Mr. Hardegree, if your School Board had the four little boys up and their fathers were politically powerful enough in their [4] community that they could keep their boys in school and then that same School Board turns around and kicks out two little girls and this first little boy that is an unconstitutional enforcement of a constitutional power, just plain is.

Mr. Hardegree: I am sure it is.

The Court: Personally, from what I have read and heard here I think the Board correctly handled the four little boys' cases. That sounds to me about what ought to be done. Now, the fact that they were not on the premises during the noon hour—now we all know students that go to school in the morning, except in the case of a few, will slip off and smoke cigarettes and a few who go home and eat—the school has got them until the termination in the afternoon, particularly if they are bus children. I am not persuaded by the fact that they slipped off and got in a car across the street [5] to drink their beer; and let me say this, I commend the Board for having the intestinal fortitude to handle the little boys just like they did—the thing I am questioning is whether they are being fair to these other people, you have kind of got to be consistent about these things.

Mr. Hardegree: Yes, Your Honor. I think the Board understands that and I think the Board would like for the Court to understand it, Your Honor, they are very serious minded about this case and are not acting arbitrarily in their estimation.

The Court: I do not want to be placed in the attitude, if it can be avoided, of saying that the Mena School Board has to come to the United States District Court to be ordered to do that which the Constitution of the State of Arkansas says they ought to do. I would like for them to work it out and not have any such precedent on the [6] record. I hope it will get back in time to where the Federal Courts won't take these school cases. I always lived thinking that the State of Arkansas had the say; the Federal Government at that time did not support our school system, did not create the school system, and, I thought, did not have any right to interfere with it. In this case you do not have the color problem. If these were colored people, if they were black people, I think the Court would have to jump in and do something or the Eighth Circuit would murder me, but unfortunately for these people they are white people, southern white people, but they ought to be treated just as fairly as little black people. I think the School Board ought to be big enough to face up to it and not make me have to make an Order about running the schools; I do not want to have to make any orders about a school district; I think the schools would be [7] better off if we could keep the Courts out of the schools. I do not plan to rule on this application until I get the report. Can you give it to me within a week?

Mr. Hardegree: We will, Your Honor.

The Court: If you care to see the report that Lewis Jones from Fayetteville filed in the Huntsville School case I would be glad to let you see that. Their School Board met and handled their problems and everything was taken care of all right.

Mr. Core: Could we request a setting for trial in these cases?

The Court: As soon as I rule on your Motions—after I get that—we will set it for trial.

Mr. Hardegree: Hopefully that will not come to pass but if the Court should grant the Motion and should be talking about a setting—we reserve the right to answer their pleadings as amended and after the Motion is granted.

The Court: We will move along in an orderly manner, the damage is being done every day a child is out of school. I have [8] heard enough to know the little girls are at fault; but hasn't the rule been unconstitutionally applied? That is the only thing that bothers me. Give me your report within a week and then I will pass on Mr. Core's application. I do not want the School Board to think it is being clubbed to death about this matter but since these children are not black children and no question of race or color in it there is a big doubt in my mind they could qualify under 42-1983. That is the right to vote and things of that kind. It is aimed at color; but I still do not see why white folks cannot be treated as fairly as blacks. We will recess this until we get the report.

* * * * * * *

DEFENDANTS' REPORT TO COURT

April 12, 1972

Honorable Paul X. Williams
United States District Court
Western District of Arkansas
Federal Building
Fort Smith, Arkansas 72901

Re: Justice, et al. vs. Mena Special School District, et al.
Civil No. FS 72-C-11
Report to Court on further meeting

Dear Judge Williams:

In accordance with the request of the Court made at the last appearance in Court on this cause, the Mena School Board met in regular session on Tuesday, April 11, 1972, at 7:30 p. m. in the High School building. Present at the meeting were Mr. Stevenson, president of the Board, Mrs. Goforth, Mr. Forrest Ogden, Mr. J. M. Aleshire, Mr. Raymond Stroud, and Mr. Bob Philpot. Also present was Mr. Inlow, superintendent of the Mena schools, and Mr. Justice along with Miss Peggy Strickland, and Mrs. Doris Crain along with Virginia Crain, and other persons there in the position of spectators.

The remarks and statement of the Court, which had been reduced to writing and forwarded to Mr. Stevenson, were read to the School Board and those persons in attendance. The petitioning students, Miss Strickland and Miss Crain, together with their parents, were given an opportunity to make a statement, and statements were made on behalf of each child. Mr. Stevenson then entertained a motion for reinstatement of all three of these children into the school system.

Mr. Ogden moved that the children be reinstated in school, and his motion was seconded by Mr. Aleshire. When the question

was called, Mr. Stevenson called for a vote, and the vote was recorded on the motion as follows: Mr. Ogden and Mrs. Aleshire for the motion; Mr. Stroud abstaining on the question; and Mr. Stevenson, Mrs. Goforth and Mr. Philpot voting against the motion. Mr. Stevenson then announced that the motion failed to carry.

Judge Williams, if there is anything further I can do along this line and in connection with your request, or otherwise, please advise.

Respectfully

Joe H. Hardegree

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

AMENDMENT TO COMPLAINT

(Filed March 14, 1972)

Now come the plaintiffs herein and amend their Complaint in the following particulars:

1. The actions of the defendants as specified in the Complaint heretofore filed in this cause, and each of them, has damaged each of these plaintiffs by depriving them, unlawfully, of their right to attend the public school at Mena, Arkansas, and by forcing them to pursue some substitute means of education at their expense and inconvenience; and further has caused and will continue to cause humiliation and embarrassment to the plaintiffs by reason of the stigma attached to the action of the defendants in assessing excessive punishment by way of expulsion of each of the plaintiffs for the balance of the term

and for enforcement of the School Board policy under color of State Law requiring the making of a record of the unlawful punishment assessed against these plaintiffs, which record will continue to follow, harass, intimidate, abuse and embarrass the plaintiffs for the remainder of their lives. In addition, the plaintiffs have been and are being compelled to litigate with the defendants their right to attend the public schools of Mena, Arkansas, at great inconvenience and expense and will continue to do so until this litigation is terminated.

2. By reason of the foregoing actions of the defendants herein the plaintiffs have been damaged and will be damaged by the time of the trial in this case in the amount of $25,000.00 each.

3. The plaintiffs further allege that the actions of the defendants have been taken with malice toward these plaintiffs and without any bases therefor and with such wanton disregard of the rights of these plaintiffs as to subject themselves personally and individually, and as to subject the school district which they represent, to punitive damages in this case in the amount of $5,000.00 for each defendant herein.

Wherefore, the plaintiffs pray judgment against the defendants and each of them, in their personal and individual capacaties respectively, and against the defendant school district, jointly and severally, in the amount of $25,000.00 as compensatory damages and reasonable attorney's fee for each plaintiff herein; and further pray judgment against each defendant, personally and individually, and against the defendant school district, for punitive damages in the amount of $5,000.00 against each such defendant. The plaintiffs further pray judgment for all of their costs herein laid out and expended.

(Signatures and certificates omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

DEPOSITION
Upon Interrogatories and Cross Interrogatories of
ANDREW SPAHL

1. Please state your name, address and occupation.

Andrew C. Spahl. That's spelled S-p-a-h-l. 1445 Farmdale Road, St. Paul 55118.

2. What position do you hold with Theodore Hamm Company, St. Paul, Minnesota?

Vice President of Manufacturing.

3. Please state how long you have held that position.

I'v been with the company since 1957. Vice President of manufacturing since 1969—April 1st.

4. Please state whether or not Theodore Hamm Company produces, bottles and sells a drink product known as: Lime, Right Time, a flavored malt liquor?

Yes, we do, but we don't call it lime. We call it Gold. We don't have any lime on our products. We produce a flavored malt liquor. I am mailing a sample bottle as Exhibit 1 to this deposition. I have affixed my signature to the label, attested by the court reporter.

5. Please state whether or not such drink was being bottled for sale in the State of Oklahoma in 12 ounce bottles during 1971 and 1972 with a gold colored cover over the mouth of the bottle across which was printed the word: Oklahoma.

That is correct.

6. If your answer to the preceding interrogatory is in the affirmative, please state the alcoholic content of a 12 ounce bottle of said drink bottled for the State of Oklahoma during that time.

The 12-ounce bottle was not to exceed 3.2 alcohol by weight.

7. Do you have production controls for the purpose of insuring that the alcoholic contend of each bottle does not exceed the percentage which you have stated in your answer to the interrogatory immediately preceding this one.

Yes, we do.

(Signature line and jurat omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

SEPARATE ANSWER OF S. L. INLOW

(Filed May 1, 1972)

Comes the Defendant, S. L. Inlow, and files herewith his separate answer to the Amendment to Complaint and states:

1. The Defendant denies that this Court has jurisdiction of the asserted cause of action against this defendant contained in the Amendment to Complaint.

2. This defendant denies the allegations of paragraph 1 of the Amendment to Complaint.

3. This defendant denies the allegations of paragraph 2 of the Amendment to Complaint.

4. This defendant denies the allegations of paragraph 3 of the Amendment to Complaint specifically denying that he has acted with malice toward the Plaintiffs.

5. This defendant states that the action of the Board of the Mena School District was taken under the Authority of the Statutes of the State of Arkansas and that the defendant, as an employee of the Board, had no power or right to vote upon the suspension or expulsion of the Plaintiffs nor does he have the power or right to re-instate the Plaintiffs. Thus, defendant can incur no liability to the Plaintiffs because of the enforcement by the Board of school policies and regulations governing the discipline of students which policies and regulations were enacted by the Board under its Statutory Authority.

6. This defendant specifically pleads privilege in his communications with the Board, his employer.

Wherefore, Defendant, S. L. Inlow prays that the Amendment to Complaint be dismissed.

(Signature and Certificate omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

SEPARATE ANSWER OF DUDDY WALLER

(Filed May 1, 1972)

Comes the Defendant, Duddy Waller, and files herewith his separate answer to the Amendment to Complaint and states:

1. The Defendant denies that this Court has jurisdiction of the asserted cause of action against this defendant contained in the Amendment to Complaint.

2. This defendant denies the allegations of paragraph 1 of the Amendment to Complaint.

3. This defendant denies the allegations of paragraph 2 of the Amendment to Complaint.

4. This defendant denies the allegations of paragraph 3 of the Amendment to Complaint specifically denying that he has acted with malice toward the Plaintiffs.

5. This defendant states that the action of the Board of the Mena School District was taken under the Authority of the Statutes of the State of Arkansas and that the defendant, as an employee of the Board, had no power or right to vote upon the suspension or expulsion of the Plaintiffs nor does he have the power or right to reinstate the Plaintiffs. Thus, defendant can incur no liability to the Plaintiffs because of the enforcement by the Board of school policies and regulations governing the discipline of students which policies and regulations were enacted by the Board under its Statutory Authority.

6. This defendant specifically pleads privilege in his communications with the Board, his employer.

Wherefore, Defendant, Duddy Waller, prays that the Amendment to Complaint be dismissed.

(Signature and certificate omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

SEPARATE ANSWER
Of Defendants, Jo..a P. Wood, Ed Stevenson, Rachel Goforth, Bob Philpot, Jim Aleshire, Raymond Stroud, Bill Plunkett and Mena Special School District

(Filed May 10, 1972)

Comes the named Defendants and make this their separate answer to the amendment to complaint filed herein, and state the following:

1. The named Defendants allege and state that this Court has no proper or sufficient jurisdiction to hear and entertain the cause of action for damages now asserted by the Plaintiffs in the amendment to complaint filed herein. In this connection the Defendants would state and show unto the Court that at the time of being allowed to file the amendment to complaint the pleadings previously filed by the Plaintiffs had been substantially worked out and the allegations of the Plaintiffs made by the prior pleadings had been substantially litigated, and the issue raised by the prior pleadings filed herein were in substantial effect disposed of. At the time of being permitted to file the amendment to complaint herein, the Plaintiffs were and are in effect simply filing a new lawsuit, and there is no sufficient grounds or foundation for jurisdiction of this Court either alleged on the face of the complaint or present in fact. Specifically, the Defendants would state and show unto the Court that there is no diversity of citizenship involved in this action. There is no sufficient identification of the parties or other allegation to support jurisdiction under 42 U.S.C. 1981 and 1983.

2. The Defendants who file this answer deny all of the allegations of the amendment to complaint filed herein, and state that the same are untrue, and without waiving any of their rights to plead in bar or in abatement submit this their general denial answer.

3. In addition to general denial, the Defendants specifically deny the allegations of paragraph 1, the allegations of paragraph 2 and the allegations of paragraph 3 of the amendment to complaint filed herein.

4. In addition to the foregoing, the named Defendants affirmatively and positively state that all of the actions taken by the named individual Defendants who make this answer were taken by the said individual Defendants in their capacities as members of the Board of Education of Mena Special School District, and as elected officials of the Mena Special School District, and as such are not subject to question or challenge by the Plaintiffs in this forum or any other forum. Further in this connection, the Defendants would state and allege that the Plaintiffs have no legal standing or judicial standing to challenge or question the acts of the individual Defendants as members of the school board of Board of Education of the Mena Special School District. Further answering, the Defendants would state and show that no justiciable issue is presented by the pleading filed by the Plaintiffs herein.

5. That the named individual Defendants herein are "State Officials," and are duly elected representatives, servants and agents of the people of the State of Arkansas, and in particular of the patrons of the Mena Special School District, and that the Court has no jurisdiction nor do the Plaintiffs have any standing to call into question the actions of the named individual Defendants.

6. That the Plaintiffs have remedies at law and in equity, or either of them, which have not been exhausted, and the

Plaintiffs should be required to exhaust remedies available in the State of Arkansas before they may properly bring or maintain this action.

7. That in addition to State judicial remedies available to the Plaintiffs, the Plaintiffs have available to them administrative remedies which have not been resorted to or exhausted, and the Court should not entertain any action on the part of the Plaintiffs in this Court until such time as all remedies, both administrative and judicial, are resorted to and exhausted.

8. That more specifically, and without limiting the applicability of prior or subsequent portions of this answer, the Plaintiffs have available to them the remedy of an action for mandamus, or have had available to them at all times the right of an action for mandamus, in the Courts of the State of Arkansas, and the Defendants herein have been amenable to process in such an action or other judicial remedy which might be chosen or selected by the Plaintiffs, and no action for mandamus or other judicial remedy has been resorted to or commenced by the Plaintiffs in the State Courts of Arkansas or elsewhere, other than this action for damages brought in this Honorable Court.

9. That no exceptional circumstances have been shown or alleged by the Plaintiffs to justify intervention by this Honorable Court. This Court may and should take judicial cognizance of the procedures available to the Plaintiffs, or remedies available to the Plaintiffs, in the State Courts of Arkansas, and abstain from acting to adjust rights and differences between or among the parties in this cause or alleged cause.

10. That the acts done or alleged to be done by the Defendants, John P. Wood, Ed Stevenson, Rachel Goforth, Bob Philpot, Jim Aleshire, Raymond Stroud and Bill Plunkett, even if otherwise actionable, were done by the named Defendants in a quasi-judicial capacity, or by the named Defendants

as quasi-judicial officers, and in their official capacity as members of the Board of Education of Mena Special School District, in which official capacity the said named Defendants are called upon under the law to exercise quasi-judicial powers and authority.

Wherefore, these Defendants pray that the complaint filed herein by the Plaintiffs together with the amendment to complaint filed herein by Plaintiffs be dismissed and that these Defendants have their costs of Court incurred and other relief to which they may show themselves to be entitled.

(Signatures and certificate omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

ANSWERS TO INTERROGATORIES

(Filed June 23, 1972)

Comes now, S. L. Inlow, one of the defendants in this cause, and for answer to the interrogatories propounded herein by the plaintiffs would state as follows:

* * * * * * *

7. If you will do so without a Motion to Produce, please attach to your answers to these interrogatories a complete and unabridged copy of the present Mena School Board policy.

Answer: See attached Exhibit "A" for a complete and unabridged copy of present Mena School Board policy.

8. During what year was the rule adopted under which the plaintiffs were expelled in this case?

Answer: 1967.

9. Was the rule originally adopted in the same language which it now reads? If not, please set out in your answer the original language of the rule, and, separately, its language in every form to which it has been amended to the present time, and give the dates of the meetings where any such changes were adopted.

Answer: Yes, the rule was originally adopted in the same language in which it now reads.

10. If you will do so without a Motion to Produce, please attach to your answers to these interrogatories copies of the minutes of the meeting of the School Board where the said rule was adopted and the minutes of every meeting wherein any change has been made to the said rule up to the present date.

Answer: See Exhibit "B" attached hereto as a copy of the minutes of the meeting of the school board where the rule in question was adopted. See Exhibit "B-1" for minutes of meeting where this policy was amended.

11. If you will do so without a Motion to Produce, please attach to your answers to these interrogatories a copy of the minutes of every meeting wherein the subject of expelling the two plaintiffs in this case was considered or discussed whether mentioned in the said minutes or not.

Answer: See Exhibit "C" attached hereto.

* * * * * * * *

23. Has the school board had information from Duddy Waller and Mrs. Curtis Powell or any other source that other members of the Home Ec class drank the punch prepared by the plaintiffs after having been told that it contained an intoxicating liquor?

Answer: The School Board has had information that other members of the class possibly drank the punch prepared by the plaintiffs, and that this was possibly after they had information that the punch contained some intoxicant or alcoholic beverage.

24. Have any of such children been expelled for the balance of the term?

Answer: No.

(Signature line and Certificate of Service omitted.)

Exhibit "A"

* * * * * * * *

3. Suspension

* * * * * * * *

b. Valid causes for suspension from school on first offense: Pupils found to be guilty of any of the following shall be suspended from school on the first offense for the balance of the semester and such suspension will be noted on the permanent record of the student along with reason for suspension.

(1) Immoral conduct

(2) Insubordination

(3) Conduct that would tend to impair the discipline of the school.

(4) The use of intoxicating beverage or possession of same at school or at a school sponsored activity.

(5) Conduct that would tend to harm other pupils

* * * * * * *

Exhibit "B"

MINUTES

Mena School Board

1-10-67

The Mena School Board met in the Board Room at Mena High School, Tuesday evening, January 10, 1967, at 7:30 o'clock with all members present. With Dr. Grace presiding, the following business was transacted:

* * * * * * * *

There were several school patrons present, among them was Mr. and Mrs. Bob Martin who appealed the decision by the school administration to suspend their son Jimmy Martin, for the balance of the semester for drinking beer at a junior high school party. The board listened to the comments of the parents, other patrons and the superintendent and decided this was a matter that should be discussed in closed session since it involved personnel (the parents, student, and administration.) This closed session to convene immediately after the regular session.

* * * * * * * *

Upon adjournment of the regular session the board immediately went into closed session to discuss the problem presented by Mr. and Mrs. Bob Martin. There was considerable discussion of this matter with the board being in complete agreement with the administration that drinking intoxicating beverage at school or at a school-sponsored activity is a most serious offense and if tolerated, would impair the discipline of the entire school. There was deep concern expressed for the boys involved and a desire expressed to do everything possible to assist them in making up credits lost because of the resulting suspension. The board members and the superintendent arrived

at a decision that was felt to be fair to all concerned with as much leniency as possible and still maintain good discipline of the school and was expressed by the following action: Mr. Carver made the motion that the suspension stand and that Jimmy Martin and Jimmy Masters be placed on probation for the next semester and that during this time a plan would be devised whereby they might make up this work and receive credit depending upon the attitude and interest of the parents and students involved. Mrs. Spencer seconded the motion. All members were present and voted yes on this motion.

• • • • • • • •

School policies concerned with student discipline were discussed and adopted upon motion by Mrs. Spencer and seconded by Lowrey Embry. A copy of the policies adopted are attached and become a part of these minutes.

Exhibit "B-1"

MINUTES

Mena School Board

3-10-70

• • • • • • • •

There was discussion of the abusive use of drugs among students in various parts of the country and the need to discourage such a practice. Dr. Wood made the motion to adopt a drug policy as follows and to add it to the board policy under **Pupil Personnel Policy** as item C.3.b.6. of page 26:

> The use or possession of narcotics, hallucinogens, amphetamines, barbiturates, or other drugs subject to abuse (includes all drugs under H.R.2) at school or at a school

> sponsored activity. Sniffing glue or other similar compounds is considered in the same classification as the above drugs in applying this penalty.

This motion was seconded by Dr. Grace and carried.

• • • • • • • •

Exhibit "C-1"

MINUTES

Mena School Board

2-18-72

9:30 PM

The Mena School Board met in special session on the above date for the purpose of considering a disciplinary problem. Members present were: Ed Stevenson, Raymond Stroud, Rachel Goforth, Jim Aleshire, Bob Philpot and Bill Plunkett. Superintendent S. L. Inlow, High School Principal, P. T. Waller, home economics teacher, Gladys Powell, and Jim Barton an interested patron were also present.

Mr. Stevenson called the meeting to order and asked Superintendent Inlow to explain the purpose of the meeting. He explained that there was a disciplinary problem involving three high school girls who had put an alcoholic beverage into punch served to a group of FHA girls and some of their mothers. He then asked Mrs. Powell to explain the details since she was most familiar with what had happened. Mrs. Powell explained what had happened and asked that the board be as lenient as possible with the girls. Mr. Waller concurred with what Mrs. Powell had reported and recommended that the girls be suspended but that

the suspension not be put into effect depending upon the good behavior of those involved.

Mr. Inlow was making a statement agreeing with what Mr. Waller had recommended when there was a phone call received concerning further behavior of one of the girls involved. After returning from answering the phone he reported the nature of the information received, whereupon Mr. Waller withdrew his recommendation and Mr. Inlow stated that he would have no recommendation in the case.

Mr. Stevenson asked the board memoers if anyone cared to make a motion to grant leniency in the case or to change the application of the policy. There being no such motion, he ruled that the policy had been upheld and that the three girls: Jo Wall, Peggy Strickland, and Virginia Crain, be suspended from school for the remainder of the semester as required by board policy.

• • • • • • • •

Exhibit "C-2"

MINUTES

Mena School Board

3-2-72

7:30 PM

The Mena School Board met in special session on the above date for the purpose of hearing Peggy Strickland, Virginia Crain, and Jo Wall, students of Mena High School, their parents, and their attorneys, concerning the above named students being expelled from school and also to hear a report from a committee concerning selling land to parties interested in a vocational tech-

nical school. Members present were Dr. Wood, Mr. Stevenson, Mr. Stroud, Mrs. Goforth, Mr. Philpot, Mr. Plunkett, and Mr. Aleshire. Others present were Peggy Strickland, her parents, Mr. and Mrs. Virgil Justice, Virginia Crain and her mother, Mrs. Doris Crain, their counsel, Mr. Ben Core, and other interested parties. The meeting place was changed from the board room to the high school library in order to accommodate all parties interested.

Mr. Stevenson presided and declared a quorum present and opened the meeting by calling upon Mr. Joe Hardegree, counsel for the board, who made a statement of background information and of facts established by the board at its meeting February 18, prior to the expulsion of the three students.

Mr. Stevenson then called upon the girls, their parents, or their attorney to present their case. Mr. Core made some introductory remarks and identified himself as an attorney representing Peggy Strickland and Virginia Crain. He then proceeded to review the case by questioning the girls as to what had happened. The girls went into details in response to questions by their attorney with comments from time to time from their parents.

After all parties were given opportunity to make whatever statements they desired that might have a bearing on the case, Mr. Stevenson asked if anyone cared to make a motion to revoke or change the previous action of the board taken on February 18. There being no motion to this effect, he then asked if there was a motion to sustain the previous action. Mr. Aleshire moved that the board sustain the action previously taken and that the girls remain expelled from school for the balance of the semester. The motion was seconded by Dr. Wood and carried unanimously.

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Exhibit "C-3"

MINUTES

Mena School Board

3-14-72

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Mr. Stevenson opened the meeting with a few remarks concerning the recent expulsion of three students and then called upon Mr. Hardegree to make a report to the board concerning the case. Mr. Hardegree reported that Mr. Bea Core, attorney for the plaintiffs, had filed an amendment to the original motion in federal district court to include a damage suit against the school district, against each board member individually, and against the high school principal and superintendent individually.

• • • • • • • •

The board discussed school discipline and were in agreement that the principals, with approval of the superintent, should administer board policies concerning suspensions and expulsions of students and that in all cases parents of students affected must be notified immediately of the action taken with reasons for such action and informed of their right to appeal to the board.

Exhibit "C-4"

MINUTES

Mena School Board

4-11-72

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Mr. Virgil Justice was recognized by the chairman and expressed apologies to the Board for the behavior of Peggy Strick-

land and Virginia Crain which resulted in their expulsion from Mena High School February 18, 1972. He further appealed for a reconsideration of this expulsion. At this time, Mr. Stevenson read an excerpt from a hearing in Federal Court in Ft. Smith, Arkansas, on April 7, 1972. Mr. Forrest Ogden made a motion to reinstate Peggy Strickland, Virginia Crain, and Jo Wall in Mena High School. Mr. Aleshire seconded the motion; it did not carry.

• • • • • • • •

In the United States District Court
Western District of Arkansas

(Title Omitted in Printing)

ANSWERS TO INTERROGATORIES

(Filed June 23, 1972)

Comes now S. L. Inlow, one of the Defendants in this action, and for answers to interrogatories filed herein by Plaintiffs and served upon Defendants would state as follows:

• • • • • • • •

Interrogatory No. 2. In the responses as aforesaid, in response to request No. 5, you have denied that no witness appeared before the Board purporting to have personal knowledge of the type of beverage acquired by the Plaintiffs nor of its alcoholic content, if any. Please give the names and addresses of all persons who appeared before the Board at the special meeting of February 17, 1972 purporting to have such personal knowledge.

Answer: Edward Stevenson, a member of the Board, purported to have knowledge of the type of beverage in question,

which knowledge had been acquired by him prior to the meeting of the Board. This is Edward Stevenson, 1207 Texas Street, Mena, Arkansas 71953.

• • • • • • • •

Interrogatory No. 4. In the responses aforesaid, in response to request No. 7, you have denied that no person has ever appeared as a witness before the School Board purporting to know what the alcoholic content of the mixture was when brought on the campus by the girls. Please state the names and addresses of all persons who have ever appeared as witnesses before the School Board purporting to know what the alcoholic content of the mixture was when brought on the campus by the girls.

Answer: Edward Stevenson, 1207 Texas Street, Mena, Arkansas, apparently obtained information prior to the meeting of the School Board that the beverage brought onto the campus by the girls was an alcoholic beverage and intoxicating in its effect. As to the alcoholic content of the mixture produced by the girls, this would apparently be only within their knowledge.

Interrogatory No. 5. In the responses aforesaid, in response to request No. 8, you have denied that no person appeared before the School Board at the February 17, 1972 meeting having personal knowledge that the mixture brought on the campus by the Plaintiff was intoxicating, even in the slightest degree. Please state the names and addresses of all persons who appeared before the School Board at the February 17, 1972 special meeting having personal knowledge that the mixture brought on the campus by the Plaintiffs was intoxicating even in the slightest degree.

Answer: Edward Stevenson and perhaps other members of the school Board, who had perhaps made inquiries of their own concerning the nature of the beverage in question, and

who may have had prior knowledge of the nature of the beverage in question.

Interrogatory No. 6. In the responses aforesaid, in response to request No. 9, you have denied that the mixture brought on the campus by the Plaintiff was made up of two bottles of Lime, Right Time, flavored malt liquor, a product of Theodore Hamm Company, 720 Payne Avenue, St. Paul, Minnesota 55165. You have further denied that the said two bottles were twelve ounce bottles and prior to being brought on to the campus were mixed with sixty ounces of a non-alcoholic soft drink for a total mixture of eighty-four ounces of liquid. Since you have denied the foregoing facts, please state what the mixture was which you claim to have been brought on the campus by the girls and give the names and addresses of all witnesses to support such facts.

Answer: This Defendant and the School Board have received proof that an alcoholic or intoxicating beverage was brought onto the school campus. The children in question state that it was two bottles of the type of alcoholic beverage mentioned in this interrogatory. This Defendant does not have personal knowledge as to whether it was one bottle, two bottles or more. The Board was apparently satisfied that an alcoholic and intoxicating beverage was brought onto the school premises, and have no claim as to what mixture was produced by the students in question from the alcoholic beverage.

• • • • • • • •

Interrogatory No. 15. If you will do so without a motion to produce, please attach a copy of the School Board minutes for the special meeting of March 24, 1972.

Answer: See copy of School Board Minutes for special meeting of March 24, 1972 attached hereto as Exhibit "A".

(Signature line and Certificate of Service Omitted)

Exhibit "A"

MINUTES

Mena School Board

3-24-72

The Mena School Board met in the Mena High School Library on the above date at 7:00 pm for the purpose of dealing with a disciplinary problem involving Mike Burnette, Bill Ansley and Jeff Brown, all high school students, to hear recommendations of the superintendent, and to hear parents of the above mentioned students. All board members were present including Mr. Forrest Ogden, recently elected member. Also present was Mr. S. L. Inlow, Suprintendent of Schools, Mr. P. T. Waller, Sr. High School Pirncipal, Mr. Curtis Powell, high school teacher, Mr. Tom Freeman, representing the Mena Star, Mr. Jack Reeves, representing Radio Station KENA, the above mentioned students, their fathers, and Gary Ham and his father.

With Mr. Ed Stevenson presiding, the following business was transacted; Mr. Inlow was called on to relate the occurrences leading to the administrative expulsion of these three boys for the balance of the current semester because of drinking beer during the lunch period on March 23. Mr. Burnett, Mr. Brown, and Mr. Shinn (stepfather of B. Ansley) made statements, Mr. Waller and Mr. Powell were called on for statements, and members of the board made statements and asked questions.

Mr. Philpot moved to uphold the administrative suspension of the three boys. Motion died for lack of second.

Mr. Ogden moved that the boys be suspended from Mena High School for a period of two weeks. Mr. Plunkett seconded this motion and it carried six to one with Mr. Philpot abstaining.

* * * * * * *

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

AFFIDAVIT OF S. L. INLOW

(Submitted with Motion for Summary Judgment
by Defendants Inlow and Waller)

(Filed July 6, 1972)

State of Arkansas }
County of Polk } ss.

My name is S. L. Inlow. Until my resignation at the end of the 1971-72 school year I was Superintendent of Schools of the Mena Special School District. I was employed as Superintendent of the Mena Special School District for 6 years prior to my resignation. Duddy Waller was Principal of Mena High School during the 1971-72 School District.

In 1967 the Board of Education of Mena School District adopted administrative policies to govern the Mena Schools. Under the provisions of said policies the Superintendent of Schools was designated as executive officer of the Board of Education and was charged with the responsibility of implementing the policies of the Board of Education but "shall have no vote" in matters upon which the Board voted. The policies also provide that "the Board may accept, modify, or reject recommendations made by the superintendent."

Duddy Waller and I were employed by regular teacher's contract as approved by the Arkansas Department of Education.

On Friday morning, February 18, 1972, Peggy Strickland, Virginia Crain, and Jo Wall went to Mr. Waller's office and admitted that they had put malt liquor in some punch served

at a school activity. Jo Wall told Mr. Waller that they had put two bottles of malt liquor in the punch and that they were sorry they had done it; that it was meant as a prank or joke and they had not intended to hurt anyone. At first they said "we had it left over after a party and hid it behind a tree near the drive-in theater" but later admitted they had gone to Oklahoma and brought the malt liquor to put in the punch. Mr. Waller reported the incident to me immediately upon having heard the confession of the girls. He and I agreed that we had no other choice but to temporarily suspend the girls until the Board met to act upon the case. Mr. Waller told me he had told the girls that he would take this up with the Board of Education. He and I agreed that he would call the Board and report the incident to them, which he did. I called the acting President of the Board, Mr. Ed Stevenson, and asked him to call a meeting of the Board as soon as possible so that, in the event the girls were readmitted to school, they would miss as little school as possible. The Board was called into special session that Friday night, February 18, 1972. Mr. Waller asked the Board to be lenient with the girls. I made no recommendation to the Board either at that time or any time subsequent. My sole duty was to report the facts to the Board and then let he Board exercise its own judgment based upon the facts. During the meeting of the Board I was called to the phone to talk to the husband of the Home Economics teacher, who is also a teacher. I was informed that one of the girls, said to be Jo Wall, had just cursed another girl following a basketball game accusing her of telling on them for spiking the punch. This girl, presumable Jo Wall, had allegedly told the other girl that she would get even with her even if she had to lie about her. Since the information as to the name of the girl who made the threats was pure hearsay I simply reported to the Board that it had been reported to me through a teacher that one of the girls had threatened a girl for telling on the girls. When I reported the phone call to the Board Mr. Waller said "I withdraw my recommendation." The Board had not asked Mr. Waller for

his recommendation. He had asked leniency for the girls on his own initiative. I made no recommendation in the case. It was not my place to make a recommendation since the matter was Board policy. Of course, I did not vote on the action taken by the Board since I am not permitted to vote nor is Mr. Waller. After I verified that the girl who allegedly threatened another girl was actually Jo Wall I reported her name to the members of the Board. The Board was all informed of the name of the girl prior to the hearing on March 2.

The Board voted to suspend the girls until the expiration of the school term.

On March 2, 1972, the School Board met in special session for the purpose of hearing Peggy Strickland, Virginia Crain and Jo Wall. Peggy Strickland and her parents and Virginia Crain and her mother were present at the meeting. They were represented by Mr. Ben Core, their legal counsel. Mr. Core reviewed the case by questioning Peggy Strickland and Virginia Crain as to what had happened. The girls went into details under the guidance of Mr. Core. All parties were given full opportunity to make whatever statements they desired that might have a bearing on the case. After hearing all of the statements the Board unanimously sustained it previous action. Neither Mr. Waller nor I made any recommendation since the matter was in the hands of the School Board.

On March 11, Mr. Virgil Justice appeared before the Board on behalf of Peggy Strickland and Virginia Crain and appealed for reconsideration of the expulsion of the girls. A motion was made to reinstate the girls but it did not carry. Neither Mr. Waller nor I participated. Mr. Waller submitted his resignation as Principal effective that day which was accepted. His resignation was not connected with the incident of the expulsion of the three girls but was for personal reasons.

On January 10, 1967, two junior high students had been suspended for the balance of the semester for drinking beer at

a school sponsored activity. On October 12, 1971, a senior high boy, who was President of the Student Council was suspended for the semester for possession of beer at a high school dance. In both of these cases the Board followed its policies and I did not participate since I had no vote.

Neither Mr. Waller nor I had ever had any difficulty with either of the girls. In fact I knew them by sight but just as any other students.

(Jurat and signature omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

State of Arkansas }
County of Polk } ss.

AFFIDAVIT

(Submitted in Opposition to Motion for Summary Judgment)

(Filed July 24, 1972)

My name is Peggy Strickland. Prior to February 18, 1972 I was a student at Mena High School. In the day prior thereto, to wit, February 17, 1972, Mrs. Curtis Powell, my Home Ec teacher, had questioned Virginia Crain and I concerning an incident of spiking the punch at a Home Ec party some ten days prior to that. Virginia and I first denied that we had had anything to do with such an incident but Mrs. Powell told us that she intended to handle the matter herself and that it would not go any higher than her and that if we did have anything to do with it that we should tell her about it. After these assurances we did tell and admit to Mrs. Powell that we had been involved. She stated that our punishment would be that we would not be permitted to attend the state Home Ec meeting. We thought the matter was closed.

The next morning Mrs. Powell called us back for another discussion and told us that she could not keep her word of the previous day and that she was going to have to report the incident to the principal and that it would be better for us if we would go down with her and tell the principal, Mr. Duddy Waller, of our involvement in it. Since we had already told Mrs. Powell, we really had no choice. We went down with her and told Mr. Waller. We also apologized to him at that time and assured him that we would not do that anymore or anything like it. Mr. Waller praised us for having admitted our involvement and said that he would talk to us later. He did call us back later in the day and told us that he was expelling us for one week, that we could tell our parents if we desired to do so but that if we did we should also tell them that they should not be contacting any members of the School Board, that the School Board was going to meet that same evening and discuss the case and that he, Mr. Waller, was going to recommend to the Board that they be lenient on us.

By reason of the things which Mr. Waller said to us I cautioned my parents very strictly that they should not call any member of the School Board and they did not. Neither were my parents ever contacted by any member of the School Board nor by either Mrs. Powell, Mr. Waller or Mr. Inlow.

The next morning, which was February 19, 1972, a Saturday morning, Mr. Waller called for me by phone at my residence and I talked with him. He told me that the School Board had met the previous evening and that if I desired to discuss the results of the meeting I could do so in his office, and I could bring my parents if I wanted to.

I told my parents of the conversation and they and I went immediately to the office of Mr. Waller at the Mena High School. We were accompanied by Virginia Crain and her mother and Jo Wall. Also present were Mr. Inlow and Mrs. Curtis Powell, and Mr. Waller.

My parents asked Mr. Inlow to call another special meeting of the School Board in order that we three girls and our parents could meet with them and talk about what had happened and what the punishment should be. Mr. Inlow said that he did not have the authority to call another meeting of the School Board. He was asked if it was not true that he was the executive secretary of the Board and he admitted that he was. He was asked if it was not true that he had called the meeting of the previous evening which was also a special meeting and he admitted that he had. He then changed his reason for not calling another special meeting to say that the rule under which the School Board had acted was mandatory, that it was not possible to have any expulsion for less than the balance of the school term and that there was no need to call the School Board back into special session because the Board had done the only thing that they could do under the rule. In spite of our repeated requests for some meeting with the Board Mr. Inlow refused to consider another meeting of the Board. We left the principal's without any favorable indication at all that we would ever get to meet with the School Board.

For the next few days efforts were made by my parents and by the pastor of our church, Brother Jordan, to obtain a special meeting of the Board through personal contacts with the individual members of the Board and their officers. All of our efforts were futile and invariably the reason given was that the rule under which they had acted was mandatory and they had no other choice than to expel us for the balance of the term. Finally, in despair my parents employed an attorney.

I have read a copy of Mr. Inlow's affidavit of June 28, 1972. He uses the word "suspend." Before this he always used the word "expel." On his page 3 he implies, if he does not say, that the Board knew that the only girl involved in the incident reported by Mr. Curtis Powell was Jo Wall when they expelled all 3 of us. This is not true.

(Signature and Jurat omitted)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

ORDER

(Filed July 21, 1972)

On this July 21, 1972, upon consideration of Motion for Partial Summary Judgment filed July 6, 1972, by defendants S. L. Inlow and Duddy Waller, the Response of plaintiffs, together with briefs submitted by the parties, the court is of the opinion that said motion should be overruled.

It Is, Therefore, Ordered and Adjudged that the Motion for Partial Summary Judgment be, and hereby is, overruled.

It Is Further Ordered that this case be, and hereby is, set for trial to a jury on Thursday, August 17, 1972, at 9 a.m. or as soon thereafter as the case can be reached.

(Signature omitted)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

COURT'S INSTRUCTIONS TO THE JURY AT THE TRIAL[2] IN AUGUST 1972[3]

(Partial)

No. 14

In the case at bar, each plaintiff has the burden of proof to prove that her right to attend school at Mena has been violated wrongfully and with malice by the Defendants from whom she seeks damages.

No. 22

You are instructed that the Mena School Board had the right to promulgate as a part of its statement of policy the declaration concerning intoxicants and the matter of the reasonableness or unreasonableness of this declared is not properly in question in this case.

Furthermore, the School Board Members had the right to enforce the same.

You are instructed that the teachers and school administrators had the right to enforce the school policy.

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[2] As of the time of the decision later rendered by the Court of Appeals, the testimony presented during the three day trial to the jury had not been transcribed. On June 13, 1974, that transcript was filed with the record then in custody of the United States District Clerk.

[3] Other pertinent instructions are set forth in the District Court's Memorandum Opinion which is reproduced in the Petition for a Writ of Certiorari as Appendix V at A. 15, 21-23.

No. 25

If you find that in fact the malt liquor "Right Time" is not and was not an intoxicant as that term is used in the declaration of Mena school policy; but you find that the Plaintiffs and the school authorities in good faith considered it to be, then you are instructed that the good faith of a particular Defendant in discharge of duties as a school board member or school administrator is a full and complete defense in this case as to that particular defendant.

The intelligence and quality of judgment of each of the defendants is not in issue in these cases, and

It is a well known fact that hindsight is often better than foresight, so

If you find from a preponderance of the evidence that an incorrect decision was made by any defendant in this case, the fact that the decision is incorrect or that a more sensible or more intelligent decision would have been more desirable is not necessarily controlling, and

If you find that the particular Defendant was acting in good faith, then the good faith of the Defendant is a total defense in this case.

Defendant School Board Requested Instruction No. G (As amended)

Before the jury can find for either Plaintiff against any Defendant herein, the jury must find from a preponderance of the evidence in this case that the particular Defendant committed an intentional, purposeful discrimination with malice toward that particular plaintiff.

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

ORDER

(Filed August 21, 1972)

On this August 21, 1972, come the parties hereto by their respective counsel, and comes the jury heretofore impaneled on August 17, 1972, for the trial of this cause and trial thereof resumes.

All of the evidence having been concluded on Saturday, August 19, 1972, and deliberation commenced on that day but not concluded, the jury is called in open court, and all members answering present to the roll call, the jury retires to the jury room to resume its deliberation.

After further deliberation, the jury announces to the court through its foreman that it is hopelessly deadlocked, and that further deliberation would be fruitless. All members of the jury being in agreement with the foreman, and the court being of the same opinion,

It Is Ordered and Adjudged that a mistrial be and is declared in this cause, and the jury is discharged from further consideration of the case.

(Signature omitted.)

In the United States District Court
Western District of Arkansas

(Title Omitted in Printing)

MOTION
For Directed Verdict and Motion for Judgment Notwithstanding Verdict or Lack of Verdict

(Filed August 24, 1972)

Comes now the Defendants, Mena Special School District and its Board of Directors and for their Motion for Directed Verdict and Motion for Judgment Notwithstanding Verdict or Lack of Verdict would state and show unto the Court as follows:

1. That the Defendants moved for a directed verdict at the close of all the evidence in the case and that motion was denied and overruled by the Court.

2. That the jury deliberating on the evidence in this case was unable to reach a verdict and consequently was discharged by the Court.

3. That pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, the Defendants herein are entitled to a judgment on their motion for a directed verdict presented to the Court at the close of all the evidence on the following grounds:

(a) That the evidence presented by the Plaintiffs does not state a cause of action on which relief can be granted.

(b) More specifically, malice on the part of the Defendants which was a necessary element of the Plaintiffs' case was not shown as to any Defendant individually nor as to the Board of Directors acting as a whole. Further stat-

ing, the Court instructed the jury that in order to find for either Plaintiff against any Defendant, the jury must find that the particular Defendant committed an intentional, purposeful discrimination with malice toward that particular Plaintiff.

(c) That the defense of good faith as instructed by the Court is a complete defense as to these Defendants in that there was nothing shown in the record that the Defendants acted with anything except the utmost good faith.

(d) That in the absence of malice on the part of the Defendants and the Defendants acting only in the utmost good faith, there is no issue remaining that would support a cause of action against any of these Defendants in that the Court instructed the jury that the reasonableness or unreasonableness of the policy of the Mena School Board regarding intoxicants was not an issue to be determined or questioned by the jury.

(e) That the Plaintiffs did not exhaust the judicial and administrative remedies available to them.

(f) That the Plaintiffs did not show that they were in a class that was being systematically discriminated against.

(g) That the Plaintiffs do not have legal capacity to sue the Mena Special School Board in a case of this type.

(h) That the Court has no jurisdiction of the subject matter herein by reason of the fact that there is no diversity of citizenship.

(i) That the Court has no jurisdiction of the person of the Defendant by reason of the fact that the School Board members were acting in a quasi judicial capacity and consequently are not liable.

Wherefore, these Defendants pray this motion for judgment on their motion for a directed verdict made at the close of all the evidence in the case be granted and that this case be finally disposed of in favor of the Defendants as required by the points of law and fact enumerated in this motion and the supplemental brief attached hereto.

(Signatures and certificate omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

MOTION
Of Defendants S. L. Inlow and Duddy Waller for Judgment in Accordance With Their Motions for Directed Verdict

(Filed August 25, 1972)

The defendants, S. L. Inlow and Duddy Waller, pursuant to the provisions of Rule 50(b) of the Federal Rules of Civil Procedure move the Court for judgment for defendants in accordance with their Motions for Directed Verdict made to the Court at the conclusion of the plaintiffs proof and at the conclusion of all the evidence of all parties and for grounds state:

1. The jury in this case failed to reach a verdict and after considering the case until Monday afternoon, August 22, 1972, were discharged by the Court. Had the jury reached a verdict for the plaintiffs against these defendants there was not sufficient substantial evidence to have sustained the verdict under the law of this case as reflected by the Court's instructions.

2. The plaintiff failed to prove by any substantial evidence that these defendants acted with malice toward the plaintiffs.

3. The plaintiff failed to prove by any substantial evidence that these defendants did not believe that their actions taken in the case were not lawful and right.

4. The evidence shows conclusively that these defendants did not promulgate the regulation forming the basis of the complaint in this case, nor did they have the right to vote upon its adoption.

5. The evidence shows conclusively that neither defendant had a vote upon the question of the expulsion of the plaintiffs for the remainder of the school term.

6. The evidence shows conclusively that the defendant Duddy Waller's only action regarding suspension of the plaintiffs was to suspend the girls for a period of 14 days (10 school days) which period of suspension was conceded by the plaintiffs and their parents to have been a reasonable period.

7. The evidence shows conclusively that the only facts presented to the School Board by defendant Waller relating to the girls violation of the school district's regulation against bringing intoxicated beverages upon the school property were the facts furnished to the defendant Waller by the plaintiffs themselves.

8. The evidence shows conclusively that the defendant Inlow made no statement of the facts to the School Board concerning the plaintiffs actions but referred to Mr. Waller and Mrs. Powell the explanation to the Board as to the statements made to them by the plaintiffs and their co-actor Jo Wall.

9. The evidence shows conclusively that defendant Waller was asked by the plaintiffs to go to the School Board and plead with the Board for leniency for them and to not inform their parents of their actions. Defendant Inlow did not present any facts to the Board. Defendant Waller cannot be held liable to

the plaintiffs for a money judgment for not notifying plaintiffs parents of plaintiffs request that they go to the Board for them when he did so specifically at plaintiffs' request and plea.

10. The facts show conclusively that defendant Inlow made no recommendation to the Board for expulsion or suspension.

11. The facts show conclusively that defendant, Duddy Waller, at no time recommended to the Board that the plaintiffs be expelled for the remainder of the term. Waller did not attend the March 2 hearing nor any subsequent hearing.

12. The facts show conclusively that the only action taken by Waller and Inlow was to withdraw a recommendation that the regulation not be enforced against the plaintiffs. As a matter of law a school teacher is under no legal obligation to recommend to a Board that it not enforce its policies or regulations.

13. The plaintiffs failed to show by any evidence that the telephone call of February 18, 1972 to the Board while it was in session in any way influenced the decision of the Board not to apply its regulation to the plaintiffs.

14. There is no question in this case of denial of a due process hearing in view of the March 2 and subsequent hearings.

Wherefore the defendants, S. L. Inlow and Duddy Waller, pray that this Court receive this Motion and upon consideration thereof enter its Judgment dismissing the Complaint as to these defendants.

(Signatures and certificate omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

RESPONSE BY PLAINTIFFS TO MOTIONS BY DEFENDANTS

(Filed September 11, 1972)

Comes the plaintiffs herein and for their joint response to the two motions filed by the defendants, one by the defendants, S. L. Inlow and Duddy Waller, and another by the remaining defendants, subsequent to the jury being discharged, state:

1. The plaintiffs admit that the jury was discharged without having reached a verdict in this case but the plaintiffs deny each and every other allegation contained in the motion of S. L. Inlow and Duddy Waller.

2. The plaintiffs deny each and every allegation contained in the motion filed by the remaining defendants.

3. Plaintiffs further state that the Court erred in several instructions given by the Court to the jury but those errors can be corrected upon a retrial of the case.

Wherefore, plaintiffs pray that the motions of the defendants be denied and that the case be rescheduled for an early trial.

(Signatures and certificate omitted.)

In the United States District Court
Western District of Arkansas

(Title Omitted in Printing)

ORDER[4]

(Filed September 29, 1972)

The above styled cause was tried to a jury on August 17, 18, 19 and 21, 1972. The jury was unable to agree on a verdict, a mistrial was declared and the jury was discharged from further consideration of the case. In due time each defendant filed a motion for judgment in his favor in accordance with his motion for a directed verdict made during the trial. Upon consideration of said motions, the court has prepared and filed its opinion and in accordance therewith,

It Is Ordered and Adjudged that said motions be and they are granted, and the complaint in this cause as to the claims of each plaintiff is dismissed with prejudice.

It Is Further Adjudged that the defendants shall recover from plaintiffs all their costs herein expended.

This September 29, 1972.

(Signature Omitted)

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[4] The District Court's Memorandum Opinion is set forth as Appendix V to the Petition for a Writ of Certiorari (A. 15).

In the United States District Court
Western District of Arkansas

(Title Omitted in Printing)

JOINT MOTION OF PLAINTIFFS FOR NEW TRIAL

(Filed October 6, 1972)

Now come the plaintiffs herein pursuant to Rule 59 and jointly file this Motion for New Trial with respect to the Order entered against them on or about September 29, 1972, and moves the Court to set aside the Order entered in favor of the defendants and grant these plaintiffs a new trial with respect to all issues for the following reasons, to-wit:

1. The Court erred in refusing to grant to these plaintiffs the temporary relief prayed by the plaintiffs at the hearing held by this Court on March 7, 1972, and erred in failing to order reinstatement of the children in school at that time pending the later trial of the case on the merits;

2. The Court erred in failing to hold the rule of the Mena School Board to be void on its face by reason of the Constitutional objections made to it by the plaintiffs;

3. The Court erred, by its instructions, in requiring the plaintiffs to prove malice on the part of the defendants before any relief whatever could be granted. In the order dismissing the case the Court erred in relying upon that rule for the evaluation of the proof submitted by the plaintiffs.

4. The instructions of the Court concerning the requirement of the proof of malice, the availability to the defendants of the defense of good faith, and the reasonableness of the rule promulgated by the school board, were erroneous and constituted an invalid basis for the evaluation of the evidence

in determining whether or not verdicts should be directed for the defendants and in determining whether or not their motions for judgment notwithstanding no verdict should be sustained. The Court erred in relying upon such instructions for that purpose.

5. The Court erred in holding that the defendants can deny these plaintiffs their constitutional rights so long as such denial is made in good faith and without malice.

6. The Court erred in holding that no defendant was liable for any of the relief claimed on the ground that "the action of a defendant would have to be a wrongful act done intentionally without just cause, and even then the good faith of a defendant is a complete defense".

7. The Court erred in submitting the case to the jury as one for damages for malicious conduct only and in evaluating the proof for purposes of ruling on the defendants' motions on that basis.

8. The Court erred in holding that the plaintiffs could have no relief whatever under any circumstances from the School District by reason of the fact that "a school district is by its nature incapable of malice".

9. The Court erred in treating this case as being only a case for the recovery of damages.

10. The Court erred in failing to give the plaintiffs a trial and a ruling on their suit for injunctive relief and for a declaratory judgment.

11. The Court erred in holding that the plaintiffs' constitutional right to attend a State supported school is not an issue in this case.

12. The Court erred in failing to submit to the jury the factual contention of the plaintiffs that their constitutional rights

had been violated by the failure of the school board to give them notice and an opportunity to be present at the secret meeting at which the plaintiffs were expelled. The Court has erred in failing to give the plaintiffs any trial on that issue as to whether or not the defendants proceeded in a constitutional manner. Early in the proceedings in this case the Court fairly well expressed itself to be of the opinion that the defendants had not proceeded in a constitutional manner but the Court has now terminated the case without ever giving the plaintiffs a trial on that issue and in so doing, has erred.

13. The Court erred in holding that Arkansas Statutes Section 80-1812 gives immunity to school directors for actions denying constitutional rights of citizens and if such construction of such Statute is correct, the Court erred in not holding the same to be unconstitutional.

14. The Court erred on page 13 of its opinion in holding that each plaintiff had admitted a violation of the school policy. This finding is not supported by any evidence.

15. The Court erred in its finding on page 3 that the girls (plaintiffs) freely admitted "they had added two 12 oz. bottles of a flavored malt liquor beverage called "Right Time" to one and a half gallons of punch at a school function held on February 7, 1972, for the purpose of "spiking the punch."

16. The Court erred in its finding on pages 3 and 4 of the Opinion as follows:

> "It (the School Board) also made provisions to its School Counselor that the girls would follow a course of instruction including some correspondence course in English from the University of Arkansas that would enable the girls to graduate with their class if they did the required work."

17. The Court erred in this statement on page 4 of the Opinion:

> "The plaintiffs then amended their Complaint and alleged as follows: . . . ."

18. The Court erred in its finding as follows:

> "The plaintiffs themselves concede that they violated the school policy, but that suspension for the remainder of the semester was too severe a penalty."

Wherefore, plaintiffs pray that the Court set aside the Memorandum Opinion and Order of September 29, 1972, and that the plaintiffs be granted a new trial upon all issues alleged in the Complaint and Amended Complaint.

(Signatures and certificate omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

ORDER

(Filed October 20, 1972)

On this October 20, 1972, upon consideration of plaintiffs' motion for a new trial filed in this cause on October 6, 1972 and in accordance with the court's letter of this date,

It Is Ordered that plaintiffs' said motion be and it is overruled.

(Signature omitted.)

In the United States District Court
Western District of Arkansas

(Title omitted in printing)

NOTICE OF APPEAL

(Filed November 17, 1972)

Notice is hereby given by plaintiffs in the above case and appellants herein, that appellants do hereby appeal from the Order of the Court made and entered on the 29th day of September, 1972, and from the Order of the Court made and entered in this cause on October 20, 1972.

(Signatures and certificate omitted.)

JUDGMENT

(Filed October 1, 1973)

United States Court of Appeals
for the Eighth Circuit

No. 72-1774 September Term, 1972

Peggy Strickland, a Minor, by Mr. and Mrs. Virgil Justice, Her Parents and Next Friends; Virginia Crain, a Minor, by Doris Crain, Her Mother and Next Friend,
Appellants,
vs.
S. L. Inlow, Duddy Waller, John P. Wood, Ed Stevenson, Bob Philpot, Jim Ayleshire, Raymond Stroud, Bill Plunkett and Mena Special School District and Rachel Goforth,
Appellees.

} Appeal from the United States District Court for the Western District of Arkansas.

This cause came on to be heard on the record from the United States District Court for the Western District of Arkansas and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that this cause, be, and it is hereby, remanded to the said District Court for action consistent with this opinion.

And it is further ordered and adjudged by this Court that an attorney's fee in the sum of $500.00 be, and is hereby, awarded to counsel for the appellants.

And it is further ordered and adjudged by this Court that costs will be taxed against all appellees except S. L. Inlow, Duddy Waller, and Mena Special School District in this cause in accordance with the opinion of this Court this day filed herein.

August 29, 1973

(Attestation omitted.)

PLAINTIFFS' EXHIBIT 14

FACTS FOUND BY SCHOOL BOARD

1. That Virginia Crain, Peggy Strickland and Jo Wall are students of Mena High School and subject to the governing rules and policies of Mena High School.

2. That on or about February 7, 1972 these three girls were charged with the responsibility of providing refreshments for a school function, being a gathering of students of the Home Economic class and some of their parents, on school premises, being the auditorium building of Mena High School, and being under the direction of Mrs. Curtis Powell.

3. That the three girls in question traveled to Oklahoma, purchased a number of bottles of malt liquor, a beer type beverage, and later went onto school premises with the alcoholic beverage and put two or more of the bottles of the drink into the punch or liquid refreshment which was to be served to members of the class and parents.

DEFENDANT INLOW'S EXHIBIT 8

February 24, 1972

Mrs. Doris Crain
1403 Missouri
Mena, Arkansas 71953

Dear Mrs. Crain:

This is to inform you that you have the right to petition the Mena School Board to reinstate your daughter, Virginia Crain, in the Mena High School.

The next regular session of the board will be March 14, 1972, at 7:30 pm in the board room, which adjoins the office of the superintendent. If you desire to do so, you may be present and petition the board at this time.

Sincerely,

S. L. Inlow,
Superintendent

DEFENDANT INLOW'S EXHIBIT 9

February 29, 1972

Mrs. Doris Crain
1403 Missouri
Mena, Arkansas 71953

Dear Mrs. Crain:

This is to inform you that there will be a special meeting of the Mena School Board for the purpose of hearing parents of the students who were recently suspended from school. This meeting will be held Thursday evening, March 2, 1972, at 7:30 o'clock in the Board Room at Mena High School.

You and your daughter, and counsel if you so desire, are invited to be present at this meeting.

Sincerely,

S. L. Inlow,
Superintendent

PLAINTIFFS' EXHIBIT 19

(MARCH 14, 1972 STATEMENT OF BOARD)

The Board of Education of Mena Special School District makes the following statement with reference to the expulsion from school of three students on February 18, 1972:

No. 1. The Board has made its decision. It was a hard and onerous decision to make, but was based on facts presented in this case, and upon what the Board feels is a fair and consistent application of the governing rules and policies adopted by the Board.

No. 2. In view of the continued interest in this matter, the Board restates that action was taken in this case and in this manner after it was fairly established that the students in question left the school without permission and the students drove some 50 miles on a round trip into Oklahoma and purchased an alcoholic beverage which would be a violation of the public laws "minor in possession of intoxicants" and "possession of untaxed beer," and that they knowingly and wilfully, and by their own admission put the alcoholic substance into a punch and brought it on to school premises.

No. 3. The Board feels that the school policy in question, which prohibits the use and possession of alcoholic beverage on school premises, is a vital and key part of the overall discipline of the Mena Public Schools, and that a failure to fairly and firmly apply and enforce this policy could and would have far-reaching and detrimental effect on the school system.

No. 4. The School Board realizes its continuing responsibility to review and study the school policies, and to make changes where called for in the judgment of the Board, and the Board intends carrying out this responsibility.

(Signature omitted.)